

From

The Excise and Taxation Commissioner,
Haryana, Chandigarh.

To

1. All Joint Excise and Taxation Commissioners (Range),
in the State of Haryana.
2. All Deputy Excise and Taxation Commissioners (ST),
in the State of Haryana.

Memo. No. 2790/ST-1
dated Chandigarh, the 13.12.04

Subject :? Instructions for constitution of circles and assessment of cases under the Haryana Value Added Tax Act, 2003

1. Definitions

‘VAT Act’ means Haryana Value Added Tax Act, 2003.

‘section’ means a section of the Haryana Value Added Tax Act, 2003.

‘the Rules’ means the Haryana Value Added Tax Rules, 2003.

‘rule’ means a rule of the Haryana Value Added Tax Rules, 2003.

‘CST Act’ means Central Sales Tax Act, 1956.

‘year’ means the financial year ended on 31st March, 2004.

‘returns for the year’ means returns prescribed to be filed under the VAT Act and includes returns prescribed to be filed under the CST Act (applicable in respect of dealers registered under the CST Act) for the quarters comprising the year and includes annual return in form VAT-R2 in case of VAT dealers (non-VAT dealers i.e. lump sum taxpayers are not required to file the annual return) but does not include annual commodity tax return.

2. Constitution of circles

The whole State will be divided afresh into 139 circles for the purpose of administration of VAT Act. Each circle will have between 800-1000 dealers depending on the type of dealers comprising it, e.g. a circle comprising mostly big manufacturers or high turnover cases may have less number of dealers. Excise and Taxation Officer will be incharge of the circle and will be the appropriate assessing authority for that circle. Cases of industrial units covered under section 61(2)(d) of the VAT Act in a district will constitute a separate circle. If the number of such units in a district are less than 300, these will be

joined with other circle but all these industrial units will be with one Excise and Taxation Officer-cum-assessing authority. Once the application of section 61(2)(d) of the Act ceases in respect of an industrial unit, its physical location will determine the circle it belongs to. Except for this peculiarity, a circle will be compact and comprise contiguous areas. The number of circles to be constituted in each district are listed in appendix 'A'. All Deputy Excise and Taxation Commissioners (ST) in the State will constitute circles in their districts in consultation with Joint Excise and Taxation Commissioner (Range) accordingly and send a list of circles so constituted in format given in appendix 'B' through the Joint Excise and Taxation Commissioner (Range) so as to reach Head office latest by 7.1.2005 for approval by the Commissioner. The present arrangement will continue till the newly constituted circles are approved. The whole exercise will be completed by 15.1.2005. The action required to be taken as per the guidelines given below shall not wait for constituting of circles afresh and must begin immediately. The assignment of circles to Excise and Taxation Officers posted in a district on the sales tax side will be made by the Deputy Excise and Taxation Commissioner (ST) of the district in consultation with Joint Excise and Taxation Commissioner (Range) and once made it shall not be changed without approval of the Commissioner.

3. Selection of cases for scrutiny, issuing notice for assessment and passing order of assessment

3.1. Action in cases where all quarterly returns have been filed

3.1.1. Selection of cases for scrutiny

Cases will be selected for scrutiny in accordance with the criteria laid down in rule 27(1). In some cases the returns may not be complete. So long as a return discloses gross turnover, taxable turnover and computation of tax, it will be included for the purpose of making the selection for scrutiny. As the process of digitization of return data (keying return data in computer, verification with returns, correction and appending to database) is not complete in any district, each district will select cases criterion-wise manually and prepare a list of such cases latest by 31.12.2004. (A letter sent on the subject a month back has remained unanswered. This position is unacceptable. Any failure to prepare the complete list by 31.12.2004 will be construed as dereliction of duty and further action will be taken accordingly.) Cases which meet more than one criteria will be listed only

under the first criterion for selection and will not be mentioned again under the later criterion. Criteria of selection in order of priority and instructions relating thereto are given below:

Sr. No.	Criterion of selection	Instructions
(1)	Cases of industrial units availing any tax concession under clause (d) of sub-section (2) of section 61 till such units are subject to the relevant provisions in the 1975 Rules;	All cases.
(2)	Gross turnover exceeding five hundred lakh rupees in a year;	All cases.
(3)	Claim of sales made in the course of inter-State trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into the territory of India together with value of goods exported out of State exceeding twenty five lakh rupees in a year;	If aggregate of turnover under all the specified categories exceed Rs.25 lakh in a year, the case will be included. Please note that category of export out of State has been added.
(4)	Claim of refund exceeding three lakh rupees in a year;	All cases including those where provisional refund allowed.
(5)	Claim of input tax exceeding ten lakh rupees in a year;	All cases
(6)	Fall in gross turnover or payment of tax compared to last year;	All cases
(7)	Claim of sale, purchase or consignment of goods not matching with the accounts of the other party to the transaction;	Include only cases where actual verification done and mismatch is found.
(8)	Cases of any particular trade or trades which the Commissioner may select;	Specific trades susceptible to high tax evasion will be identified by AETC (I/E), Rohtak / HO, Chandigarh and proposal submitted to ETC.
(9)	Cases based on definite intelligence about evasion of tax;	List will be prepared / compiled by AETC (I/E), Rohtak/H.O., Chandigarh.
(10)	Exception cases in which ratio between purchases and sales or between input tax and output tax or between stocks and sales is way out of the general trend in the trade or industry;	List will be generated by Computer Cell at H.O. after complete digitization of return data of the State.
(11)	Cases selected at random;	-do-

Cases meeting the criterion of selection mentioned at Sr. No. (2), (4), (6), (7) or (9) will be taken up for assessment by Special Assessment Teams ('SAT') constituted by the Head office and consisting of Assistant Excise and Taxation Commissioner / Senior Excise and Taxation Officer assisted by Assistant Excise and Taxation Officers, Taxation Inspectors and supporting staff. All other cases including those mentioned elsewhere in this document will be handled / assessed by the Circle assessing authority.

3.1.2. Action in cases where returns are incomplete

3.1.2.1. Standards of completion of returns

Standards of completion of returns will be as per 'Explanation' to proviso to section 15(1) of the Act. The Explanation reads –

“Explanation.– A return is complete in material particulars if it contains the information required to be furnished therein, is correct arithmetically, accompanied with the statutory lists, documents and proof of payment of tax due according to the return in full and is duly signed by the dealer.”

It may be noted that documents will include forms under the CST Act i.e. C/D, E-I, E-II, F, H forms but will not include declarations or certificates under VAT Act required to be produced before the assessing authority only on demand. The declarations or certificates under the VAT Act may be demanded only in scrutiny cases and not in other cases.

3.1.2.2. Opportunity for completion of return(s) and dealing with non-compliant dealers

Dealers whose returns are incomplete will be issued notices for completion of returns specifying the lists, documents etc. required to be furnished by them for completion. Opportunity will also be given to fill-in any unfilled item or column in the returns which contains material information or to correct any arithmetical mistake in computation of turnover, taxable turnover or tax. Tax payable on account of any correction / rectification made in the return(s) or completion thereof etc. will be paid by the dealer. **In case a dealer does not comply with the terms of the notice given for completion / correction of the returns (except for furnishing of complete statutory forms), his case will be taken up for scrutiny and a regular notice for assessment will be**

issued to him in form VAT-N2 last date for service of which on the dealer will be 30.4.2005 in case of non-VAT dealer and 30.11.2005 in case of VAT dealer to be not barred by limitation. It will be advisable in these cases to effect the service of notice in form VAT-N2 before 31.1.2005 in case of a non-VAT dealers and before 31.8.2005 in case of a VAT dealer.

3.1.2.3. Dealing with compliant dealers

In cases where terms of the notice for completion of returns have been complied with except for furnishing of complete statutory forms, the assessment orders both under the VAT Act and the CST Act should be made before 30.4.2005 in respect of non-VAT dealers and before 30.11.2005 in case of non-VAT dealers after taking into account the statutory forms furnished and placed on record. It may be noted that any verification of statutory forms must be completed well before the expiry of one year from the last date prescribed for furnishing of the last return for the year so that in case of detection, notice in form VAT-N2 could be served within the limitation of one year.

3.1.3. Cases where returns are complete and case not selected for scrutiny

Such cases will be deemed to have been assessed to tax and the annual return shall be deemed to be the copy of the assessment order.

3.1.4. Presumption of deemed assessment

It should be noted that the presumption of deemed assessment is automatic in all cases where returns have been filed except those selected for scrutiny, so the burden is on the assessing authority to select the cases for scrutiny including those arising out of non compliance with the terms of the notice issued for completion of returns. Limitation for issuing notice for assessment in scrutiny cases is one year from the last date prescribed for furnishing of the last return for the year or the actual filing of the return, whichever is later. So, the selection of scrutiny cases must be complete well before one year, so that the notices could be issued well within the limitation.

3.1.5. Completion of assessment

It must be noted that the time for completion of assessment is three years from the close of the year to which the assessment relates. So, assessment orders must in

all cases of scrutiny be made and copies of the orders supplied before 31.3.2007 in respect of cases for the year 2003-04. Assessment in scrutiny cases is likely to take considerable time, so assessment work must start in right earnest immediately. In non-scrutiny cases wherever the assessment order is required to be made, it should be made within one year of the date prescribed for furnishing of the last return for the year.

3.1.6. Uploading of list of scrutiny cases on official website

It is mandatory under the law to upload the list of scrutiny cases on the official website. It will, therefore, be compulsory for all Deputy Excise and Taxation Commissioners (ST) in the State to send to Head office list of all such cases on or before 7.1.2005. The list will contain the dealer's name, his TIN and the criterion of selection as scrutiny case. The list will be emailed, followed by a hard copy signed by the Deputy Excise and Taxation Commissioner himself and sent through Joint Excise and Taxation Commissioner (Range). Hard copies should reach Head office on or before 15.1.2005.

3.1.7. Passing assessment orders in case of non-VAT dealers

Non-VAT dealers are not required to file annual return. In their case, if the quarterly returns are complete, the assessing authority should record his satisfaction about the completion of the quarterly returns in the form of an assessment order and intimate the dealer. It is necessary to sustain subsequent re-assessment / revision proceeding should the facts of the case so require.

3.2. Cases where return(s) for the year have not been filed

3.2.1. Any quarterly return not filed.

Though there is no limitation for issuing notice for assessment in such cases yet there is limitation for passing and supplying order of assessment within three years from the close of the year to which the assessment relates. Where there is material on record for making assessment there is no advantage in delaying issue of notice for best judgment assessment and the notice in such cases should, therefore, be issued and served before 31.1.2005 and the cases finalized well before the limitation of three years.

3.2.2. Annual return not filed though quarterly returns filed.

Same action as in case of 3.2.1. above except that the notice for best judgment assessment will go for the year.

4. Assessment of cases relating to the period up to 2002-03

The pendency of such cases is still huge and it appears in spite of repeated direction to dispose of these cases expeditiously, requisite effort has not been made in assessing these cases. This position is unacceptable. In all circumstances, all cases pending for assessment relating to the period up to 2001-02 and 80% of the cases for the year 2002-03 must be disposed of up to 28.2.2005 and for the disposal of these cases notwithstanding the constitution of circles afresh, these cases may be assigned to Assistant Excise and Taxation Officers for assessment. The disposal of pending cases for assessment will also be closely monitored by Joint Excise and Taxation Commissioner (Range) from time to time. Any failure to dispose of pending assessment cases assigned to an officer for disposal will be construed as his personal failure to discharge his duties well. It will also be taken as a supervisory failure of Deputy Excise and Taxation Commissioner (ST) and Joint Excise and Taxation Commissioner (Range) concerned.

Joint Excise and Taxation Commissioner (ST)
for Excise and Taxation Commissioner, Haryana,
Chandigarh

Endst. No.

A copy is forwarded to ?

- (i) All Additional Excise and Taxation Commissioners,
- (ii) All Joint Excise and Taxation Commissioners (Appeals),
- (iii) All Deputy Excise and Taxation Commissioners (Excise), in the State,
- (iv) All other Officers in the Head office,
in the State for information and necessary action; and
- (v) PS/ETC for kind information of the Excise and Taxation Commissioner, Haryana,
Chandigarh.

Joint Excise and Taxation Commissioner (ST)
for Excise and Taxation Commissioner, Haryana,
Chandigarh