

APPROACH TO DEPARTMENTAL AUDIT

-By CA Mahadev.R

Concept of audit

'Departmental audit' – These two words create lot of panic in the minds of assessee. The assessee should note that there would be no need to panic when the legal compliances have been taken care properly. If the assessee is well aware of provisions of the law along with good internal control systems in place, he can face the audit with lot of confidence. He should also be aware of areas which would be covered by the department in the audit. The departmental officers would verify the private records of the assessee with respect to indirect taxes. They would see if the assessee is paying taxes properly or not. Any short/non payment of liability. They would also verify if the cenvat credits are not wrongly utilised. The valuation of goods would also be verified to ensure no revenue leakages.

Applicable statutory provisions and frequency of audit

The department may conduct the audit under any of the following provisions:

1. Excise Audit 2000 popularly known as EA 2000
2. Valuation audit under Section 14A of CE Act 1944
3. Cenvat audit under Section 14AA of CE Act 1944
4. Audit under Rule 22 of Central Excise Rules 2002
5. Service tax special audit under Section 72A of Finance Act 1994
6. Audit under Rule 5A (2) of Service tax Rules 1994

The frequency of audit norms for audit is also fixed in the following manner:

Sl. No.	Audit Frequency	Criteria in Central Excise	Criteria in Service tax
1	Once a year	Paying tax of Rs.3 crore or more [Cash+Cenvat] annually	Paying tax of Rs.3 crore or more [Cash+Cenvat] annually
2	Once in two years	Paying tax between Rs.1 crore to Rs.3 crore [Cash+Cenvat] annually	Paying tax between Rs.1 crore to Rs.3 crore [Cash+Cenvat] annually
3	Once in five years	Paying tax between Rs.50 lakh to Rs.1 crore [Cash+Cenvat]	Paying tax between Rs.25 lakh to Rs.1 crore [Cash+Cenvat]
4	10% and 2% of excise duty and service tax payers respectively	Paying tax upto Rs. 50 lakh [Cash+Cenvat]	Paying tax upto Rs.25 lakh [Cash+Cenvat]

Before conducting the audit, the department should intimate the assessee in advance. The audit cannot be conducted without prior notice which should be at least 15 days in advance. The assessee would be asked to provide lot of information before the department visits the premises of assessee. The information should be provided without fail and within the time specified. If the assessee cannot provide the information on time, then he should approach the department to get additional time to submit the information. Based on the information provided, a desk review

would be conducted by department to identify certain areas which requires closer examination. Then the premises would be visited for verification of records.

Whether department can conduct audit?

This question may sound awkward to the reader as the audits being conducted by the department from ages and this question did not arise any time. However, recently the honourable High court of Allahabad has held that the department cannot conduct the audit. The High court has held that Rule 5A(2) of Service tax Rules 1994 empowers the department only to collect the information or documents from the assessee and only a chartered accountant or cost accountant can perform the audit of such information or documents. This is in light of the fact that Section 72A of Finance Act 1994 provides that the commissioner can order for special audit of accounts of assessee by a chartered accountant or a cost accountant. Based on this view, the assessee can refuse the audit of their records by the department. However, the case for sure would be referred to the Supreme Court which takes its own time to clear the matter. Therefore, it is advisable to assessee to allow the department to conduct the audit and also write a letter to the department stating that the audit cannot be conducted by them in lieu of this High Court decision but still information would be provided.

Some common mistakes by the assessee

The assessee should be very careful in course of audit conducted by the department. On many occasions, the assessee ends up in paying huge taxes due to lack of awareness and fear of department. Some of the common mistakes by the assessee during audit are as follows:

- Providing wrong information or statements to the department
- Not providing the information sought by the department
- Not seeking professional help when required
- Attending the departmental auditors by staff who do not have adequate knowledge
- Payment of taxes or reversal of credits based on oral instructions of department

Assistance from professionals

The assessee can face the departmental audit very easily when he is aware of relevant provisions of law. However, it would be very difficult to keep track of regular changes in the law. Especially in case of indirect tax laws which keeps changing regularly. This is where the professionals would be of great help to assessee. The assessee always can seek help from professionals in regular legal compliance. Apart from this, following could be some of the other services which the assessee can obtain from professionals:

- Periodical training sessions for the staff engaged in compliance to keep them updated about recent changes
- Providing expert opinion in case of any legal complication which has impact on the business
- Periodical review of indirect tax compliance to ensure regularity in tax payments, cenvat credit availment, valuation of goods and services, foreign currency payments which have impact under service tax
- Review of records before departmental audit

Getting the records reviewed before the departmental audit would be of great help. A professional can not only review the records but he can also build lot of confidence in the mind of assessee to face audit. There are lot of precautionary steps to be taken during audit which can minimize the adversity/ pain of audit. This could be taken care with the assistance of a professional- getting internal auditor to include in scope or getting only a IDT health check conducted. Lot of times the review exercise would end up in lot of value addition along with exposures that can be guarded against as many a time assessee would not be aware of benefits like exemptions, abatement and other export benefits.

Conclusion

The assessee need not fear and blindly follow the departmental instructions in course of audit. With adequate knowledge of legal provisions and good system in place, the audit can be handled without much hindrance. If necessary, the assessee should seek the assistance of professionals in this regard as the professionals could not only avoid unnecessary liabilities to the assessee but also add lot of value to the assessee. Even mind set of the assessee should change as in many of the cases he fails to reach out to professionals considering them to be a cost instead of treating them to be trouble shooters. Surprisingly many such audits [including pre-audit on getting notice] end up in net value add as credits being missed is quite common.