

## Is Dept./CAG audit Legal?

By: [Madhukar N Hiregange](#)

The Central Excise as well as Service Tax have been amended post liberalization to follow the self assessment scheme. It means that the return is accepted as correct. In this type of a scheme there needs be a check against filing incomplete, incorrect, faulty returns. Therefore there are provisions for search & seizure as well as summon for giving evidence.

In addition at times the Special audits in case of suspected revenue leakages or irregular cenvat credit the appropriate officer can get the same audited by a chartered / cost Accountant as per [Section 14A](#) & [14AA](#) respectively. Similar provisions under [section 72 A](#) of the [FA 1994](#) for service tax exists.

Further under [rule 22](#) of the [Central excise Rules](#) any officer authorised by the Commission can seek information for scrutiny, verification and check to safeguard revenue. Similarly under [Rule 5-A\(2\)](#) of [ST Rules](#).

In the last decade we have observed that the severity of audit by the IAP as well as the CAG has been more and more an exercise in extortion for personal and revenue gains. There are of course a number of audits conducted fairly and professionally. The audit is in the opinion of the paper writer not a revenue augmentation/ collection division of the Government of India.

Under article 265 no tax can be collected without the authority of law.

Several times the powers of the C&AG to audit the books of private entities has been questioned. Unless the organization is a PSU or Government has stake in the same, there maybe a lack of powers.

As far as Private limited companies are concerned, the officer asking the documents has to be authorised and ultimately, the audit is to be conducted by the Audit Party headed by the Chartered Accountant/Cost Accountant, as the case may be, deputed by the Commissioner. This maybe a safeguard to ensure independence and avoid conflict of interest if done by the tax collecting body.

In a recent judgment of Allahabad HC in [M/S A.C.L. Education Centre \(P\) Ltd. & Others V/s. Union Of India Thr.Secy. Deptt. Of Revenue, New Delhi & Others \[2014 \(1\) TMI 1562 - ALLAHABAD HIGH COURT \]](#) Case held that in case of private assesseees, the Commissioner could refer the matter to an officer to collect the material or Chartered Accountant for the purpose

of audit. Thus, for the purpose of audit, the material can be collected either by the officer authorized by the Commissioner or by the Auditor himself. But, audit will be performed only by the Chartered Accountant or Cost Accountant.

**Tax compliant assesses may seek clarity from the audit wing by way of a RPAD letter seeking confirmation from them whether the same applies every time they have an audit and if insisted agree to comply under protest.**

**Further for all the past disputes where the show cause notice is issued ONLY based on the audit observation and the independent application of mind has not been done by the Jurisdictional range/ Division, a possible permanent argument/ defense could be that SCN based on illegal action cannot be the base of the SCN.**

**Note: This issue may be resolved by getting the provisions amended to include audit powers retrospectively, but till then one could examine whether they wish to resist**