

VOICE OF CA

AUDIT INSPECTION AND ENFORCEMENT

**Under Delhi Value
Added Tax Act, 2004**

CA Vijay Kumar Gupta

VOICE OF CA

**AUDIT, INSPECTION
AND ENFORCEMENT**

Under Delhi Value Added Tax Act, 2004

CA Vijay Kumar Gupta

This Book deals with Section 58 to 65 (amended upto 18-06-2012) of DVAT Act, 2004 read with Rules 22, 23, 41, 43 and 46 of DVAT Rules, 2005.

The views contained in this book are the personal views of the author and do not necessarily represents the views of any Authority. Before reaching to any conclusion in respect of the matter stated herewith, you are advised to consult the concerned provisions of law. The author or the contributors are not responsible for any financial loss to the readers. This compilation is intended only for personal circulation and not for the purpose of sale. Every effort has been made to avoid errors or omissions in this publication. Any errors, mistakes and omissions brought to the knowledge of author or publisher will be highly appreciated.

© Voice of Chartered Accountants (NGO) (Regd.)

Date of Publication: **1st September, 2012**

**Complimentary copy*

Published by:

Voice of Chartered Accountants (Regd.) (NGO)

303, Prabhat Kiran Building

17, Rajendra Place, New Delhi - 110 008

Printed by:

PRINT-WAYS

info@printwaysdelhi.com

From the Desk of the Founder of 'Voice of CA'



*CA Agarwal Sanjay
'Voice of CA'*

On behalf of 'Voice of CA', I express my immense pleasure to present the book on Audit, Inspection & Enforcement under Delhi Value Added Tax, 2004. This Book deals with Section 58 to 65 (amended upto 18-06-2012) of DVAT Act, 2004 read with Rules 22, 23, 41, 43 and 46 of DVAT Rules, 2005. These give power to the department for proper enforcement of the Act, audit of the accounts of the dealer, inspection of records, power to enter premises and seize records and goods, power to stop, search and retain goods and deals with the custody and release of records, disposal of goods, goods vehicle and security. It also provides that every person shall provide all cooperation and reasonable assistance to the Commissioner for conduct of his power under this Act. The law as on 18-06-2012 is explained in this book except stated otherwise

We hope that this book will be found useful and will help in better understanding of law and recent developments in the area of Audit, Inspection & Enforcement under Delhi Value Added Tax, 2004.

I wish to place on record my sincere and grateful thanks to the 'Team - Voice of CA' and its contributors for the contributions made by them in the preparation and printing of this book.

*CA Agarwal Sanjay
'Voice of CA'*

1st September, 2012

About the Author



CA Vijay Kumar Gupta

CA Vijay Kumar Gupta, is a commerce graduate from University of Delhi and passed the final examination of ICAI. He was admitted as associate member of ICAI in 1989 and became fellow member in 2004.

He is also an active member of **VAT Research Group** of NIRC of ICAI for the year 2012-13. He has been the convener of VAT Research Group of NIRC of ICAI for the year 2010-2011 and under his convenorship, VAT Research Group has been declared as the **Best Research Group** of NIRC of ICAI. The VAT Research Group 2010-11 has also published a '**Compendium of VAT Laws**' for all the six states of Northern India under his convenorship. He has played an active role in authoring this compendium. He has spoken on the topic of VAT/CST in seminars organized by NIRC and various study circle and professional platforms. His various articles have also been published in NEWSLETTER of NIRC of ICAI. He is an active contributor of Voice of CA and presented various PPT on the Voice of CA. He is also resolving the queries of members on the VAT/CST at VOICE OF CA. His main area of expertise is Indirect Tax particularly DVAT/CST.

He is at present special invitee of the '**Direct Tax Committee**' of ICAI since 2011- 2012. He is also a faculty of '**Direct Tax Regional Training Institute, Chandigarh of Income Tax Department**.

AN INITIATIVE OF 'VOICE OF CA'

We are a registered NGO formally incorporated on 05/03/2009, working with the objective of professional development of members of our esteemed institute "Institute of Chartered Accountants of India". In all spheres of professional, Social & Political exposure, Voice of CA attempted to share thoughts, news and views concerning CA's (after collecting data from our various reliable sources, deep scrutiny and vision) through email from our forum of www.voiceofca.in. Besides this, issues related to our profession are also brought to the notice of members. Around 35000 members come in to its horizon.

Till date over 1000 mails updating members on recent case laws have been sent, more than 4000 queries have been answered and presentation have been circulated covering various aspects of Income Tax such as Penalty, Search & Seizure, Issues on TDS, Charitable Trust, Assessment & Reassessment, Cash Credits, Deemed Dividend, Representation Before Income Tax Appellate Tribunal & CIT(A), Important aspects of Section 14A, Hindu Undivided Family under the Hindu Law & Income Tax Act, 1961, Amendments in Income Tax. Presentation on topics of Service Tax and Excise Duty, other relevant areas such as An Article on Letter of Credit, Foreign Contribution (Regulation) Act, 2010, FEMA - Rules & Procedures, GST Presentation: Compilation of all the updates of GST since July, 2010, article on Haryana VAT and various other topics, Information on relevant tenders daily news is also circulated through Voice of CA.

The main aims and objectives of this NGO are as follows:

- a. Enabling members to serve their employers, clients and the nation as a whole in a better manner.
- b. To protest the rights of the members against any discrimination and ill recognition.
- c. Represent members in front of regulators and legislators, below mentioned are some of the instances where Voice of CA represented for the benefit of its members:
 1. Representation has been made against RBI proposed decision about limiting the coverage of audit of bank branches.
 2. Representation before the Commissioner of Service Tax- New Delhi, against additional requirement for registration under Service Tax.
 3. Voice has been raised against dilution of identity with "Cost Accountants".

4. Representation has been made in respect of an article in Money Market & Business Standard regarding “Banks don’t want CA’s to appear before DRT”.
5. Representation has been made before Central Board of Direct Taxes for delaying the application of new provisions of Rule 30,31,31A, 31AA as brought by Notification no. 31/2009, dated March 25, 2009 along with Circular no. 02/2009, in consequence of which CBDT delayed the applicability of the same for indefinite period vide PRESS RELEASE, New Delhi dated 30th June, 2009.
6. Representation has been made before Hon’ble Union Minister of India, Corporate Affairs, Government of India challenging the Notification no. G.S.R. 888(E) dated 24/12/2008, requiring the same should operate in exception to Form No. 5 as fresh filling of this form involves high financial burden.
7. Representation has been made before various internal authorities such as The President, ICAI, for the benefit of students to remove the infirmities and provide better educational and examination facilities.
8. Representation has been made to ICAI on issues related to:
 - Limit of Tax Audit.
 - Cap on Concurrent Audit.
 - Live Telecast of Council proceedings.
 - Publication of Council decisions.
 - Increase in Fees of CAG audits.
 - Panels for IRDA audits.
- d. Creating better infrastructure facilities like improved libraries, shared workstations etc. for members.
- e. Reduction in steep hike in fees for members for various courses as well as membership fee.
- f. Timely & relevant academic updates is the need of the time & are quite valuable for the members & therefore a strong step need to be taken in this direction so that the same can be made available to the members as per their work requirements.
- g. Post qualification courses which are under-promoted, need to be popularized & equipped with better faculties & facilities with assurance of high professional benefits.
- h. To formulate a comprehensive roadmap to avoid recurrence of any fraud like Satyam Scam.
- i. If a CA in his audit report gives any material qualification regarding financial statements which can have adverse effect on a going concern assumption,

such CA's should not be removed unless & until a clean report is received. Also some Alternate Dispute Resolution Mechanism should be included.

- j. Role of independent director will be reviewed and there should be atleast one CA in Board of Directors of every company as an independent director by way of amendment in relevant laws.
- k. Distinguish between statutory & tax audit in reference to the responsibility of CA towards stake holders, by advertising in the media and to the public at large, so that our members are not straight away held guilty by the Press/Media without facing a fair trial from members
- l. Promoting dual audit criteria rather than Peer review for better Corporate Governance.
- m. Steps for allotting audits of Listed Companies & all those concerns where public money is at stake, to a CA Firm out of a panel maintained by ICAI, RBI etc. on rotational basis.
- n. Promotion of Micro, Small & Medium CA. firms.
- o. To make the networking more meaningful & having recognition in public sector work.
- p. Conduct research in various fields to develop business modules to help members opting to go in business field.
- q. To identify members in various organizations working on top positions as business ICONs & to bring back them with honour to help younger generations. Create an environment and a platform for interaction with persons of their own fraternity.
- r. To promote quality service and excellence in the profession of Chartered Accountancy and to press members to be proactive to changes and ensures that our members are in pace with the changes.
- s. Conduct seminars to enlighten the CAs and CA students about the recent developments and practical aspects of prevailing law. For example, a Mock Search was performed by creating an identical environment of real Search & Seizure conducted under Income Tax Act.

We wish to bring together all the members, so that we know each other better and join hands and to take our profession to greater heights

TEAM – VOICE OF CA

A full stream of professionals are working at the backdrop of Voice of CA, who is continuously extending their support since inception on the one hand and on the other participated with great enthusiasm at every particular event of importance. On behalf of Voice of CA, I personally express my heartiest gratitude to all those contributors and associated members for providing continuously their valuable contribution and support to us.

However it is difficult to mention the name of each and every contributor and associated member due to memory constraint but still a list of contributors and associated members has been prepared.

*CA Agarwal Sanjay
'Voice of CA'*

VOICE OF CA MEMBERS OF VETTING COMMITTEE

Name	Email-id
CA Anil Jain	anil@asap.net.in
CA Harish Chandra Agrawal	hcaagrawal@yahoo.com
CA Jai Prakash Manjani	jpmanjani@sify.com
CA Sushil Aggarwal	sushil@asap.net.in
CA Davendra Nath Bhardwaj	davender.bhardwaj@gmail.com
CA Umesh Chandra Pandey	umeshpandey@bmchatrath.com
CA Vijay Kumar Gupta	vijayguptaca104@yahoo.com
CA Sidharth	sidhjasso@yahoo.com
CA Mukesh Jain	vmcompany@hotmail.com
CA Mukesh K Bansal	mukbansal80@gmail.com
CA Avinash Gupta	caavinashgupta@gmail.com
CA Naresh Chand Gupta	ncguptaasso@yahoo.co.in
CA Rakesh Gupta	rg@a2zemail.com
CA Chawla Suresh	schawla.in@gmail.com
CA Sandeep Garg	garg.garg@yahoo.com
CA Sandeep Kumar Jain	casandeepjain@gmail.com
CA Rajat Mohan	rajataggarwal008@gmail.com
CA Amarpal	amar.p.ca1@gmail.com
CA Monika Aggarwal	aca.monika@yahoo.in
CA Adhir Kumar Samal	adhir.icaigmail.com
CA Apoorva Bhardwaj	apoorva.bhardwaj@gmail.com
CA Jyoti	cajyotikaur@gmail.com
CA Jatin Badlani	jjbadlani@gmail.com
CA Gaurav Kumar Singh	cagauravindia@gmail.com
CA Ajit Kumar Prasad	caajitkumar85@gmail.com

CONTRIBUTORS LIST (ALPHABETIC ORDER)

- CA Adhir Kumar Samal
CA Aditya Kumar Jha
CA Aditya Swarup Agrawal
CA Ajay Khanna
CA Ajay Kumar Agarwal
CA Ajesh Kumar Aggarwal
CA Ajit Kumar Prasad
CA Ajoy Kumar Goyal
CA Akhil Bansal
CA Akshay Jain
CA Amar Nath
CA Amar Nath Mittal
CA Amarpal
CA Ambay Parshad
CA Amit Goel
CA Amit Gupta
CA Amit Jain
CA Amit Kumar
CA Amit Kumar Aggarwal
CA Anant Jain
CA Anil Gupta
CA Anil Jain
CA Anil Khanna
CA Anil Khatri
CA Anil Kumar Chopra
CA Anil Kumar Goel
CA Anil Kumar Gupta
CA Anil Kumar Gupta
CA Anil Kumar Jain
CA Anil Kumar Maheshwari
CA Anil Kumar Singal
CA Anil Kumar Srivastava
CA Anil Sagar
CA Anil Sharma
CA Anirudh Singhal
CA Anju
CA Ankur Kapil
CA Anuj Gupta
CA Anupam Kumar Chugh
CA Anupam Mittal
CA Apoorva Bhardwaj
CA Aran Ahuja
CA Archit Batra
CA Arinjay Kumar Jain
CA Arun Ahuja
CA Arun Jain
CA Arun Kumar
CA Arun Kumar Varshney
CA Arvind Kumar Gupta
CA Arvind Mishra
CA Asha Nand Singla
CA Ashhok Kumar Jain
CA Ashish Ghosh
CA Ashish Grover
CA Ashok Kumar
CA Ashok Kumar Garg
CA Ashok Kumar Sood
CA Ashwani Kumar Jindal
CA Ashwani Kumar Randeva
CA Ashwani Kumar Relan
CA Atulya Jain
CA Avinash Gupta
CA Bajrang Lal Agrawal
CA Baldev Raj Madhok
CA Baljit S Sawhney
CA Bharat Bhushan Aneja
CA Bhawana Jain
CA Bhushan Lal Gupta
CA Brij Bhushan Kalia
CA Brij Kishore Kochhar
CA Chander Parkash
CA Chandra Mouly Mishra
CA Charanjeet
CA Charitra Kumar
CA Daleep Kumar Bhatia
CA Dalip Kumar Sachdeva

CA Darpan Gupta	CA Jagdish Badlani
CA Darshan Singh Rawat	CA Jai Kumar Mittal
CA Davendra Nath Bhardwaj	CA Jai Paul
CA Deepak	CA Jai Prakash Agarwal
CA Deepak Bansal	CA Jai Prakash Manjani
CA Deepak Bareja	CA Jatin Badlani
CA Deepak Goel	CA Jatin Bansal
CA Deepak Gupta	CA Jugal Kishore Agarwal
CA Deepak Jain	CA Jyoti Kaur
CA Deepak Kumar	CA K K Agrawal
CA Deepshikha Sharma	CA Kailash Chand Gupta
CA Dev Dhar Nagpal	CA Kailash Chandra Gupta
CA Devendra Nagpal	CA Kamal Ahuja
CA Devendra Singh Adhikari	CA Kamal Garg
CA Devinder Kumar Jain	CA Kamal Gupta
CA Dhan Raj	CA Kamal Kumar
CA Dhananjay M Paranjape	CA Kamal Kumar Jain
CA Dharm Chand Bansal	CA Kamlesh Kumar
CA Dharmender Pasricha	CA Kamlesh Kumar Bhojwani
CA Dharmendra Kumar Garg	CA Kapil Gupta
CA Dharmendra Madaan	CA Kapil Kumar
CA Dharmveer	CA Kapil Malhotra
CA Dheeraj Mehta	CA Kapil Marwah
CA Din Dayal Agrawal	CA Karan Aggarwal
CA Dinesh Kumar Gupta	CA Komal Goel
CA Dinesh Kumar Jain	CA Komal Sadana
CA Dinesh Kumar Khandelwal	CA Krishan Kumar Jamalia
CA Divya Jain	CA Krishan Vrind Jain
CA Gagandeep Singh	CA Krishna Kumar Agarwal
CA Gaurav Arora	CA Lalit Aggarwal
CA Gaurav Gupta	CA Lalit Allagh
CA Gaurav Jain	CA Lalit Mittal
CA Gaurav Kumar Singh	CA Lalit Mohan Ahuja
CA Girish Aneja	CA Lochan Kundra
CA Gopal Prasad	CA Madan Mohan Bhasin
CA Hari Gopal Chopra	CA Mahesh Kumar Agrawal
CA Hari Prasad Joshi	CA Mahesh Kumar Jain
CA Harish Chandra Agrawal	CA Mahesh Prasad Mehrotra
CA Harminder Singh Makkar	CA Makhhan Lal
CA Hemant Narang	CA Man Mohan
CA Hitesh Sindhvani	CA Manoj Arora
CA Hradesh Kumar Varshney	CA Manoj Kumar
CA Inder Jeet Singh Banwait	CA Manoj Kumar Aggarwal
CA Inderpal Singh	CA Manoj Kumar Anand

CA Manoj Yadav
CA Mayank Gaur
CA Mohinder Kumar
CA Mohit Bansal Saawariya
CA Monika Aggarwal
CA Monika Jain
CA Mrattunjay
CA Mukesh Chand Dua
CA Mukesh Goyal
CA Mukesh Jain
CA Mukesh Kumar
CA Muni Ram Garg
CA Narender Kumar
CA Narendra Kumar Rustagi
CA Naresh Chand Gupta
CA Naresh Kumar
CA Naresh Kumar Aggarwal
CA Narinder Singh Dalal
CA Naveen Garg
CA Naveen Kumar Goel
CA Naveen Wadhwa
CA Navin Kumar Tulsyan
CA Neel Kant Gargya
CA Neha Khurana
CA Niraj Jain
CA Nitin Malhotra
CA Padam Chand Tulsian
CA Pankaj Agarwal
CA Pankaj Bansal
CA Pankaj Grover
CA Pankaj Gupta
CA Pardumman Kumar
CA Partosh Kumar Jain
CA Parveen Gambhir
CA Pawan Kumar
CA Pawan Kumar Kedia
CA Pawan Singhal
CA Peush Kumar Rastogi
CA Poonam Mehndiratta
CA Prabhat Kumar
CA Prabhjot Singh
CA Pradeep Bodas
CA Pradeep Kumar Gaur
CA Pradeep Kumar Jain

CA Pragya Mansukhani
CA Prakash Chand Agarwal
CA Pramod Goel
CA Pramod Kumar Garg
CA Pramod Kumar Gupta
CA Pramod Kumar Jain
CA Prashant Gupta
CA Prashant Khandelwal
CA Prashant Narang
CA Praveen Kumar Jain
CA Prem Bhushan Kapoor
CA Prem Kumar Arya
CA Puneet Goyal
CA Pushpendra Surana
CA Rahul Bagaria
CA Rai Chand Jain
CA Raj Kumar
CA Rajat Gupta
CA Rajat Mengi
CA Rajat Mohan
CA Rajat Sharma
CA Rajay Kumar Aggarwal
CA Rajeev Aggarwal
CA Rajeev Bhatia
CA Rajeev Kumar Bansal
CA Rajender Kumar Singal
CA Rajesh Aggarwal
CA Rajesh Gupta
CA Rajesh Jhalani
CA Rajesh Kumar
CA Rajesh Kumar Bansal
CA Rajesh Kumar Bansal
CA Rajiv Kapahi
CA Rajnish Puri
CA Raju Kumar Sah
CA Rakesh Choudhar
CA Rakesh Gupta
CA Rakesh Kumar Kamiya
CA Rakesh Kumar Singla
CA Rakesh Takyar
CA Ram Niwas Mittal
CA Ram Parkash
CA Raman Khathuwala
CA Raman Kumar Malhotra

CA Ramesh Chand Gupta
CA Ramesh Chand Singhal
CA Ramesh Chandra Agrawal
CA Ramesh Chandra Gupta
CA Ravi Kumar
CA Ravi Kumar Gupta
CA Ravinder Nath Batra
CA Ravinder Pal Sharma
CA Ravinder Singh
CA Ravinder Singh Kalra
CA Rohit Kohli
CA S C Jain
CA Sachin Bhutani
CA Sachin Jain
CA Sachin Nandwani
CA Sandeep Garg
CA Sandeep Kumar Jain
CA Sandeep Puri
CA Sanjay Agarwal
CA Sanjay Arora
CA Sanjay Goyal
CA Sanjay Kumar
CA Sanjay Kumar Bindal
CA Sanjay Kumar Dwivedi
CA Sanjay Kumar Goel
CA Sanjay Kumar Gupta
CA Sanjay Kumar Rasotra
CA Sanjay Verma
CA Sanjeev Jain
CA Sanjeev Kohli
CA Sanjeev Kumar
CA Sanjeev Miglani
CA Sanjeev Prakash Agarwal
CA Santosh Kumar Sarawgi
CA Sarbjit Kumar
CA Sat Paul Sharma
CA Sateesh Jain
CA Satish Chand
CA Satish Kumar
CA Satish Kumar Agarwal
CA Satish Kumar Bansal
CA Satish Kumar Gupta
CA Satish Kumar Manocha
CA Satish Tandon
CA Satvinder Kumar Maini
CA Satya Paul
CA Satyendra Kumar Jain
CA Saurabh Gupta
CA Shailesh Mittal
CA Shanti Prashad Jain
CA Shifa Ul Islam
CA Shilpa Goyal
CA Shishir Kumar Tekriwal
CA Shivani Lohia
CA Shri Kishan Gupta
CA Shyam Sunder Katyal
CA Sidharth
CA Singh Ravinder
CA Sita Ram Bansal
CA Sonali Mahajan
CA Srikanth Chakravarthy
CA Srinivasan S
CA Subhash Chand Gupta
CA Subhash Chander Thakral
CA Sudhir Kumar Gupta
CA Sukhvinder Pal Manhas
CA Sulabh Lohia
CA Sumit Goel
CA Sumit Suri
CA Sumita Kukreja
CA Sunder Kumar Sharma
CA Sunil Dutt
CA Sunil Kansal
CA Sunil Kumar
CA Sunil Kumar Agrawal
CA Sunil Kumar Bhatia
CA Sunil Kumar Gupta
CA Sunil Sayal
CA Surender Kumar Singla
CA Surender Mohan Ahuja
CA Surender Pal Lathar
CA Surendra Kumar
CA Suresh Binani
CA Suresh Chand Agarwal
CA Suresh Chawla
CA Suresh Kumar
CA Sushil Aggarwal
CA Sushil Kumar

CA Sushil Kumar Gulati
CA Sushil Kumar Gupta
CA Sushil Kumar Mittal
CA Sushil Kumar Pandey
CA Sushil Kumar Sharma
CA Sushil Kumar Singhla
CA Swati Jain
CA Taran Jeet Singh
CA Taranjit Singh
CA Tarsem Lal
CA Tarun Makhija
CA Tilak Raj
CA Tirlok Chand
CA Tripti Goel
CA Tushar Arya
CA Umesh Chandra Pandey
CA Umesh Goyal
CA Varun Malik
CA Varun Taneja
CA Varunish Sachdev
CA Vashishta Kumar Gakhar
CA Veni Thapar

CA Venkat Raman Sharma
CA Vijay Kumar
CA Vijay Kumar Dharni
CA Vijay Kumar Gupta
CA Vijay Kumar Sanghi
CA Vikesh Kumar Chetal
CA Vinay Sawhney
CA Vineet Gupta
CA Vinod
CA Vinod Bansal
CA Vinod Kumar
CA Vinod Kumar Jain
CA Vipin Kumar Kalra
CA Virender Bahadur Mathur
CA Virender Kalra
CA Virender Kumar Gauri
CA Virender Kumar Kapur
CA Vishnu Chander Gautam
CA Vishva Deep Sharma
CA Vivek Kumar Bansal
CA Yash Pal Saini
CA Yash Pal Verma

Contents

Topic	Page no.
PART A. AUDIT AND SPECIAL AUDIT	
A.I Audit u/s 49 & proviso to section 49 (Old till 17.06.2012)	1-7
• Section 49	
• Other relevant references	
• Analysis	
I.1) Circumstances for audit u/s 49	
I.2) Period of audit	
I.3) Furnishing of report	
I.4) Penalty for failure to furnish true copy of audit report	
I.5) Audit under Income tax Act, 1961	
I.6) Documents to be filed with Audit report	
I.7) Rejection of Books and accounts	
A. II Amended provision of section 49 w.e.f 18.06.2012	7
A. III Audit u/s 58	8-12
• Section 58	
• Rule 46	
• Other relevant references	
• Analysis	
II.1) Circumstances for audit u/s 58	
II.2) Notice	
II.3) Period of audit	
II.4) Place of Audit and documents to be produced	
II.5) Responsibilities of the person on whom notice is served	
II.6) Powers of the Commissioner	
A.IV Special Audit u/s 58A	13-17
• Section 58A	
• Other relevant references	
• Analysis	
III.1) Circumstances for audit u/s 58A	
III.2) Notice of Special Audit	
III.3) Competent Authority to conduct the Special Audit	

	III.4) Audit Report & stipulated time for furnishing the report	
	III.5) Fees, incidental expenses, etc.	
	III.6) Opportunity of being heard	
A.V	Comparison between audits under DVAT Act, 2004	18-19

PART B. INSPECTION AND ENFORCEMENT

B.I	Introduction	21-22
B.II	Inspection of Records	22-27
	<ul style="list-style-type: none"> • Section 59 • Other relevant references • Analysis 	
	II.1) Documents that can be inspected	
	II.2) Place of maintenance of Books and Records	
	II.3) Records to be maintained	
	II.4) Time period to retain the Accounts /Records	
	II.5) Course of action in the event of any loss of records/accounts	
	II.6) Nature of information that may be asked	
	II.7) Can information be brought for the Act relating to some other person	
	II.8) Powers of Commissioner	
	II.9) Restrictions on the Powers to prevent disturbance of the Business	
	II.10) Consequences of Non- compliance	
	II.11) Gems of Judiciary	
B.III	Search & Seizure of Records (Section 60)	27-34
	<ul style="list-style-type: none"> • Section 60 • Other relevant references • Analysis 	
	III.1) Legislative Powers of the Commissioner	
	III.2) Whether survey team can seal the premises	
	III.3) Procedure of desealing of premises	
	III.4) Validity of documents seized during illegal search	
	III.5) Safeguards under the Code of Criminal Procedure to the dealer	

	III.6) Desealing/release of premises/articles	
	III.7) Power to requisition the services of any Police officer or any Police servant	
B. IV	Inspection and Seizure of goods (Section60)	34-35
	• Analysis	
	IV.1) Power of Inspection	
	IV.2) Power to Seize- Evasion of Tax	
	IV.3) Power to detain/ seize for want of information	
	IV.4) Release of goods	
B.V	Search and Detention of Goods Vehicle(Section 61)	35-47
	• Section 61	
	• Rule 43	
	• Other relevant references	
	V.1) Goods vehicles- check- post & barrier	
	V.2) Power to stop, search & detain goods vehicles	
	V.3) Duties of driver or Person-in-charge of goods vehicle	
	V.4) Release of goods vehicles, goods & documents	
	V.5) Detention held to be unjustified	
B.VI	Custody & Release of Records during the Seizure (Section 62)	48-50
	• Section 62	
	• Other relevant references	
	• Analysis	
	VI.1) Section 62(1)	
	VI.2) Section 62(2)	
	VI.3) Access to seized books of accounts, registers and other documents	
	VI.4) Undertaking from the dealer whose books of accounts etc. have been seized	
B.VII	Custody, return & Disposal of goods & goods vehicle (Section 63)	50-56
	• Section 63	
	• Rule 41	
	• Other relevant references	
	VII.1) Acknowledgement of Receipt	

VII.2) Report to the Commissioner by Check Post Officer	
VII.3) Custody & Return of goods	
VII.4) Auction of goods	
VII.5) Notice to owner of goods as per Commissioner's records	
VII.6) Consequences of Non Compliance of Notice-Sale of Property	
VII.7) Property of Perishable nature	
VII.8) Detention order reversed in Appeal	
VII.9) Priority to be given for application of Sale proceeds	
VII.10) Duties of officer-in-charge	
B.VIII Detention of goods pending disclosure	56-57
• Section 64	
• Other relevant references	
• Analysis	
VIII.1) Power of Commissioner	
VIII.2) Period of seizure	
B.IX Obligation to provide reasonable assistance	57-58
• Section 65	
• Other relevant references	
B. X Relevant Annexures	59-60
B. XI Chart of Penalties under DVAT Act, 2004	61-64
B.XII Forms under DVAT Act, 2004	65-66

RELEVANT CASE LAWS

V. Aboobacker Vs. State of Kerala (2010) 27 VST 308 (Ker)	7
Tulip Telecom Ltd. Vs. Govt. of NCT of Delhi (2009-10) 48 DSTC j- 359 (Del)	17
Sahara India (Firm) Vs. CIT (2008) 226 ELT 22 (SC),	17
Rajesh Kumar Vs. Dy. CIT (2006) 287 ITR 91 (SC),	17
Judgment of Hon'ble Supreme Court in Binapani Dei Saligram & Co Vs. Dy. CT(1994) 95 STC 189 Guj	25
Supreme Motors Vs State of Orissa(1980) 46 STC452 (Orissa),	25
Mariyala Venkateshwara Rao (1951) 2 STC 167(Mad)	25
K.M. PuttaSwamy Vs CTO (1988) 68 STC 241 (Kar)	26
CST vs. Malik Singh Int Bhatta (1989) 75 STC 381 (All)	26
Standard Tin Industries Vs. CST (1991) 82 STC 222 (All)	26
Jaipur Motor Company Vs. CTO(1997) 107 STC380 (Raj Tri)	26
Hindustan Steel Ltd. Vs State of Orissa 253 AIR 1970 (SC)	26
Concept and Devices Vs. State of Tamil Nadu (2010) 29 VST 41 (Mad)	26
Indian Railways Catering and Tourism Corporation Ltd. Vs. Govt. of NCT of Delhi 48 DSTC J-316 (Del)	26
R.S. Dass Vs. U.O.I. (1986) Supp. SCC 617	26
CST Vs. Mohan Brickfield (2006) 148 STC 638 (SC)	26
Virendra Kumar Goel vs. state of West Bengal (1994) 94 STC 266 (WBTT)	29
Pukhraj Vs. D.R. Kohli, Collector of Central Excise AIR 1962 SC 1559	29
V. Laxmaiah Vs. ACTO (1990) 79 STC 144 (Kar)	30
State of West Bengal Vs. Oriental Rubber Works (1997) 39 STC 333 (Cal)	30
SMXL Klothing Pvt. Ltd. Vs. CTT	30
Grover Sales Vs. CTT (2010) 7 VSTI C367 (DVAT- Trib.)	30
T. G. Leisure & Resorts (P) Ltd .v. VATO, No. F. SCTT-III/ T&T / obj/ 10/ 173-176, dated 23-Apr-12	32
Dy. CST Vs. C. Prasad (1994) 92 STC 361 (Ker)	33
Comm. Of Wealth tax Vs. Jagdish Prasad Chaudhary, AIR 1996 pat 58	41
Kaml Kothari Vs. CTO (2001) 124 STC 45 (WBTT)	41
Bhabaneswar Singh Vs. CTO (2001) 122 STC 494 (Cal)	42

Mohd.Habib Umman Vs. CST(1995) 99 STC 166 (Orissa)	45
Pollachi Timber Merchants & Saw Mills Association Vs. State of Kerala (1999)112 STC 557 (Ker)	45
Amar Traders Vs. ACCT (1998) 111 STC 265 (AP)	45
Utkal Galvanisers Limited Vs. CCT (1997) 104 STC 222 (Ori)	46
Ramesh Chawla Vs. CST (2003)132 STC 1 (SC)	46
Mahender Singh Ahluwalia Vs. CTO (2008) 13 VST 30 (WBTT)	46
Good Health Agro ech. Ltd. Vs. CTO(1996) 102 STC 226 (AP)	46
CST Vs. Mahendra Radio and Television (P) Ltd.(2001) 43 STI (All)61	46
CTT Vs. Subhash Steel Trading Corporation (2001) 43 STI 576 (All)	46
CST Vs. Mac Dowell and Co. Ltd. (2001) 43 STI 583 (All)	47
CTT Vs. Dharampal Singh (2001) 43 STI 446 (All)	47
Tarseem Singh Vs. Trade Tax Officer (2002) 126 STC 318 (UP)	47
Kwality Granites and Marbles Vs. The Ragistrar, TNTST (2006) 146 STC 25 (Mad)	50
S. Raghbir Singh Sandhawalla Vs. Comm. Of Income Tax, AIR 1958 Pun 250, 254	57
National housing bank (53 of 1987), S.36C (c)	58

Part A

**AUDIT AND SPECIAL AUDIT
(Under DVAT Act, 2004)**

*Audit can be conducted u/s 49,
Proviso to Section 49, 58 and 58A.*

**A.I AUDIT UNDER SECTION 49 & PROVISIO TO SECTION 49 (OLD)
(VALID TILL 17.06.2012)**

Section 49

*If, in respect of any particular year, the gross turnover of a **dealer** exceeds the sum prescribed u/s 44AB of the Income Tax Act, 1961, then, such dealer shall get his **accounts** in respect of such year audited by an **accountant** within a period of nine months from the end of that year and obtain within that period a report of such particulars as may be prescribed under **Section 44AB of the Income Tax Act, 1961**(43 of 1961), as amended from time to time, and a true copy of such report shall be furnished by such dealer to the Commissioner within twenty eight days from the end of the tax period ending on 31st December of the following year:*

PROVIDED that in a case where the dealer is required under Section 44AB of the Income Tax Act, 1961 (43 of 1961) to get his accounts audited, it shall be sufficient compliance with the provisions of this Section if such dealer gets his accounts audited under the said Section 44 AB of the Income Tax Act, 1961 (43 of 1961) and the rules framed thereunder and furnishes to

the Commissioner a true copy of the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed under Section 44AB of the Income Tax Act, 1961 (43 of 1961):

PROVIDED FURTHER that the Commissioner may require a dealer or class or classes of dealers to get his or their accounts audited by an accountant and obtain report of such audit duly signed and verified by such accountant and setting forth such particulars and in such format as may be notified by the Commissioner and furnish copy of such report to the Commissioner by the date notified by him.

Other relevant references

- **Dealer -Sec 2(j)**

Dealer means any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business, buys or sells goods in Delhi directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes,-

- (i) a factor, commission agent, broker, del credere agent or any other mercantile agent by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells or supplies or distributes any goods on behalf of any principal or principals whether disclosed or not;
- (ii) a non-resident dealer or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in Delhi for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business;
- (iii) a local branch of a firm or company or association of persons, outside Delhi where such firm, company, association of persons is a dealer under any other sub-clause of this definition;
- (iv) a club, association, society, trust or cooperative society, whether incorporated or unincorporated, which buys goods from or sells goods to its members for price, fee or subscription, whether or not in the course of business;
- (v) an auctioneer, who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction

of goods whether or not he has the authority to sell the goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;

- (vi) a casual trader;
- (vii) any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.

Explanation- For the purposes of this clause, each of the following persons, bodies and entities who sells any goods whether in the course of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:-

- (i) Customs Department of Government of India administering Customs Act, 1962 (52 of 1962)
- (ii) Departments of Union Government, State Governments and Union Territory Administrations;
- (iii) Local authorities, panchayats, Municipalities, Development Authorities, Cantonment Boards;
- (iv) Public Charitable Trusts;
- (v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail corporation Limited;
- (vi) Incorporated or Unincorporated societies, clubs or other associations of persons;
- (vii) Each autonomous or statutory body or corporation or company or society or any industrial, commercial, banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;
- (viii) Delhi Transport Corporation;
- (ix) Shipping and Construction companies, air transport companies, airlines and advertising agencies.

- As per Rule 42 of DVAT Rules, 2005, “Books and accounts” means-
 - (1) The following records shall be maintained by a dealer at his principal place of business, namely:-
 - a. A monthly account specifying total output tax, total input tax and net tax payable or the excess tax credit due for carry forward.
 - b. Purchase records, showing details of purchases on which tax has been paid, purchases made without payment of tax, purchases made from an exempted unit and purchases made from outside Delhi in **Form DVAT-30**. Original tax invoices for purchases on which tax has been paid and invoices for purchases made without payment of tax shall be preserved date-wise and in numerical order.
 - c. Sales records showing separately sales made at different tax rates, zero rated taxable sales and tax-free sales in **Form DVAT-31**. Copies of tax invoices related to taxable sales and invoices related to exempt sales shall be retained date wise and in numerical order.
 - d. Record of inter-state sales and inter-state transfer of goods (including that of goods sent for job work) supported by statutory declarations and such other evidence as may be relevant.
 - e. Details of input tax calculations where the dealer is making both taxable and tax free sales.
 - f. Stock records showing stock receipts and deliveries and manufacturing records.
 - g. Stock records showing separately the particulars of goods stored in cold storage, warehouse, godown or any other place taken on hire
 - h. Other records and delivery challans, wherever applicable.
 - i. Annual accounts including trading, profit and loss account and the balance sheet.
 - j. Bank records including statements, cheque book, counter foils and pay-in-slips.
 - k. Cash book, daybook and ledger.
 - (2) The following records shall be maintained by a dealer having elected to pay tax under Section 16, namely:-
 - a. Details of the goods purchased and sold by him; and
 - b. Cash book, daybook, ledger, invoice books and purchase vouchers.

- (3) Every owner or lessee of a cold storage, warehouse, godown or any such place, who stores goods for hire or reward shall maintain or cause to be maintained a correct and complete account indicating the full particulars of the person whose goods are stored and the quantity, value, date of arrival, date of dispatch and the proposed destination of such goods.
- (4) Every person who carries goods for reward shall maintain or cause to be maintained a correct and complete account indicating the full particulars of the person whose goods are carried, the quantity, value, the place and date of delivery of such goods, vehicle number, and serial number and date of Goods Receipts (GR) note and his office copy of the same.

- **Accountant- Sec 2(1)(a)**

Accountant means

1. A chartered accountant within the meaning of the Chartered Accountant's Act, 1949 (Act 38 of 1949)
2. A person who by virtue of the provisions of sub-Section (2) of Section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered; or
3. A cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or
4. A person referred to in Section 619 of the Companies Act, 1956 (1 of 1956).

ANALYSIS

I.1) Circumstances for audit u/s 49

When the gross turnover of a dealer exceeds forty lakh rupees or such other amount as may be prescribed, during any particular year, then such dealer is required to get his accounts audited by an accountant.

I.2) Period of Audit

The accounts should be audited by an accountant within a period of nine months from the end of the year in respect of which audit is to be conducted and should obtain within that period a report of such audit, duly signed and verified by accountant setting forth such particulars as may be prescribed u/s 44AB of the Income Tax Act, 1961.

I.3) Furnishing of Report

The report of audit shall be furnished by the dealer to the Commissioner within twenty eight days from the end of the tax period ending 31st December of the following year i.e. by 28th January following the end of financial year of which the accounts are audited.

I.4) Penalty for failure to furnish true copy of audit report

As per **Section 86(18)**, any dealer who fails to furnish a true copy of the report of audit u/s 49 shall be liable to pay, by way of penalty, a sum of Rs. 10,000/-.

No penalty will be levied if reasonable cause exists.

I.5) Audit under Income Tax Act, 1961

The audit of accounts of the dealer under Section 44AB of The Income Tax Act, 1961 is sufficient compliance with the provisions of this Section. No audit is required under this Section provided a report of such audit is furnished to the Commissioner in the prescribed form and setting forth such particulars as may be prescribed.

However, as per proviso to Section 49 the Commissioner may require the dealer to get his accounts audited under this Section irrespective of the fact that the dealer's accounts are already audited under Income Tax Act.

I.6) Documents to be filed with Audit report

Audit Report will include financial accounts of the dealer, audited by the Auditors but it is suggested to file the following documents with the Audit Report:-

- Reconciliation of purchases/sales
- If the final accounts are prepared on consolidated basis i.e. for all the offices of the dealer, trading account for Delhi must be separately provided.

I.7) Rejection of Books and Accounts

The correctness or completeness of a return is tested against accounts and if accounts are found to be incomplete, then the return loses its credibility. The duty in that case for the assessing officer is to adopt the procedure under

the Act i.e. make best judgment assessment based on materials gathered by him.

Suppression of inter-state purchases affects the credibility of the dealer and once his credibility is doubted by the Department, the onus is on the dealer to prove that other transactions are fully accounted by him.

CASE:- V.: ABOOBACKER VS. STATE OF KERALA (2010) 27 VST 308 (KER)

It was held that if the accounts are found to be incomplete or incorrect on account of material defect found by the Department, such as purchase or sales suppression, whether it is local or inter-State, then the assessing officer can reject the books of account and will estimate the turnover in accordance with the principles laid down in the Act and the law declared by High Courts and Supreme Court.

A.II AMENDED PROVISIONS OF SECTION 49 (W.E.F 18.06.2012)

If, in respect of any particular year, the gross turnover of a dealer exceeds sixty lakh rupees or such other amount as may be prescribed, then, such dealer shall submit a report in such manner, form and period as may be notified by the Commissioner.

No notification has been issued by the Commissioner in this regard for prescription of manner, form and period till date.

A.III AUDIT U/S 58 OF DVAT ACT, 2004 READ WITH RULE 46 of DVAT RULES, 2005.

SECTION 58

1. The **Commissioner** may serve on **any person** in the **prescribed** manner a notice informing him that an audit of his **business affairs** shall be performed and where applicable, that an assessment already concluded under this Act may be reopened.

Explanation- A notice may be served notwithstanding the fact that the person may already have been assessed under **Sections 31, 32, 33** of this Act.

2. A notice served under sub- Section (1) of this Section may require the person on whom it is served, to appear on a date and place specified therein, which may be his **business premises** or at a place specified in the notice, to either attend and produce or **cause to be produced** the books of accounts and all evidence on which the dealer relies in support of his returns (including tax invoices, if any), or to produce such evidence as is specified in the notice.
3. Person on whom a notice is served under sub-Section (1) shall provide all co- operation and reasonable assistance to the Commissioner as may be required to conduct the proceedings under this Section at his business premises.
4. The Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him, either-
 - Confirm the assessment under review; or
 - Serve a notice of the assessment or reassessment of the amount of tax, interest and penalty if any pursuant to Sections 32 and 33 of this Act.
5. Any assessment pursuant to an audit of the person's business affairs shall be without prejudice to prosecution for any offence under this Act.

RULE 46

Where the Commissioner has decided to audit the business affairs of any person under Section 58, the Commissioner may serve on that person a notice in **Form DVAT-37(Annexure- A)** in the manner prescribed in **rule 62**.

Other relevant references:

- The term “Commissioner” has been defined u/s 2(1) (h) of DVAT Act, 2004. As per Section 2(1)(h), “Commissioner” means the Commissioner of Value Added Tax appointed under sub-Section (1) of Section 66 of this Act.
- The term “person” has not been defined under this Act. As per common meaning, person may or may not be a dealer.
- As per Section 2(1)(y) of DVAT Act, 2004, “Prescribed” means prescribed by rules made under this act. Rules prescribe filing of Form DVAT 37.
- Only “Business affairs” can be covered in the Audit and no personal affairs can be challenged.
- Section 31:- Self Assessment under DVAT
Section 32:- Default Assessment of tax payable
Section 33:- Assessment of Penalty
- As per Section 2(1)(e) of DVAT Act, 2004, “business premises” means-
 - (i) The address of a dealer, registered with the Commissioner; and
 - (ii) Any building or place used by a person for the conduct of his business, except for those parts of the building or place used principally as a residence.
- Term ‘cause to produce’ signifies that such books of accounts or evidence can be produced through an authorized representative which may be his employee, relative, his counsel or any person duly authorized by him and he himself need not produce such books of accounts and records.
- As per Rule 62, notice shall be served-
 - (i) By delivering or tendering to the person, whose audit is to be conducted, or his agent, or to a person regularly employed by him in connection with the business or to any adult member of his family, or
 - (ii) By post.

ANALYSIS**II.1) Circumstances for audit u/s 58**

As per Section 58(1), the Commissioner is empowered to serve on any **person** a notice that an audit of his **business affairs** shall be performed in

the prescribed manner. An assessment already concluded under this Act may also be reopened by the Commissioner in the notice.

A notice may be served irrespective of the fact that the person may already have been assessed under Section 31, 32, 33 of the DVAT Act.

The **reasons** for carrying on the audit should be **recorded in writing**. However, the Section does not enumerate the circumstances, when the Commissioner may serve notice for audit and therefore there could be possibilities of misutilisation of powers by some officers of the Department.

II.2) Notice

The person on whom notice is served under this Section may be required to appear on a date and place specified therein.

Rule 46 & 62 of DVAT Rules, 2005 prescribes Form DVAT-37 and manner for issuing notice to the person whose business affairs are to be audited.

Service of a valid notice is **pre-requisite for passing a valid assessment order**. If the notice is not served properly then any assessment shall be deemed to be irregular.

A notice shall be served notwithstanding the fact that the person has already been assessed under the Act.

II.3) Period of Audit

The provisions does not provide for the period covered for audit. However, the contents of the notice in **Form DVAT-37** clearly evidences that the authority of issuing notice will necessarily state the period to be covered during audit.

For making reassessment, the overall limitation prescribed under **Section 34(1) of the Act** will prevail to avoid reassessment as a result of adverse finding of audits.

The time limit for completion of audit proceedings, after initiation, should be prescribed by the Act also.

As per Section 34(1) of DAVT Act, 2004, No re- assessment shall be made by the Commissioner after the expiry of four years from-

- The date on which the person furnished original or revised return, as the case may be, under this Act; or

- The date on which the Commissioner made an assessment of tax for the tax period,
Whichever is earlier.

II.4) Place of audit and documents to be produced (Section 58(2))

The person on whom a notice under Section 58(1) is served may require him to appear on a date and place specified therein.

Appearance by the person on whom a notice under Section 58(1) is served may be at his business premises or at a place specified in the notice to either attend and produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his returns (including tax invoices, if any), or to produce such evidence as is specified in the notice.

II.5) Responsibilities of the person on whom notice is served (Section 58(3))

The person on whom a notice is served under this Section has the responsibility to provide all co-operation and reasonable assistance to the Commissioner, required to conduct the proceedings at his business premises.

Where the officials wish to verify the stock, dealer is expected to co-operate and also make available his staff, if needed, to count or physically verify the goods lying in the business premises of such person. It is also expected of the dealer not to create any artificial obstacles in the working of the officials.

Section 65:- Every person shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the Commissioner's activities under this Act.

II.6) Powers of the Commissioner (Section 58(4) & (5))

After considering the return, the evidence furnished with the returns, the evidence acquired in the course of the audit, or any information otherwise available to Commissioner, he shall, either-

- a) confirm the assessment under review; or
- b) serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty if any pursuant to Section 32 and 33.

Prosecution for any offence under this Act shall be separate from any assessment pursuant to an audit of the person's business affairs.

FAQ released by Department on Audit

Q.1 Provisions of audit and scrutiny would lead to harassment?

Ans. Scrutiny would only be undertaken in small number of cases after detailed assessment of the profile of the trade and trader; it would be based on analysis of risk of evasion, probability and propensity of evasion through management information system and source based information.

Q.2 Audit can take place of any person and there is no limitation period?

Ans. Only cases where evasion and avoidance are suspected are to be picked up for audit. Honest taxpayers need not worry. However, there will be a clear and transparent criteria for audit to avoid selective targeting without justification.

Q.3 VAT gives unfettered powers for inspection of records, enter premises and seize records and goods?

Ans. Powers under VAT are similar to the powers available under the DST Act.

Q.4 Auditing will cause inconvenience to dealers?

Ans. Audit is a friendly interaction to seek clarification about information submitted by a dealer in a self-assessment regime like VAT.

Q.5 Does VAT give sweeping powers for conducting audit?

Ans. Since dealer will not come for assessment, so in exceptional cases where additional information is required, the Department has powers to ask for additional information or carry out audit.

A.IV SPECIAL AUDIT U/S 58A OF DVAT ACT, 2004

Section 58A

1. *If, at any stage of the **proceeding** under this Act, the **Commissioner**, having regard to the nature and complexity of the business of a **dealer** and the interest of the revenue, is of the opinion that it is necessary so to do, he may direct the dealer by a notice in writing to get his **records** including books of accounts, examined and audited by an **accountant** or a panel of accountants or any other professional or panel of professionals nominated by the Commissioner in this behalf and to furnish a report of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants or professional or panel of professionals and setting forth such particulars as may be specified.*
2. The provision of sub- Section (1) shall have effect notwithstanding that the accounts of the dealer have been audited under any other provisions of this Act or any other law for the time being in force or otherwise.
3. Every report under sub-Section (1) shall be furnished by the dealer to the Commissioner within such period as may be specified by the Commissioner:

PROVIDED that the Commissioner may, on an application made in this behalf by the dealer and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit:

PROVIDED FURTHER that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred eighty days from the date on which the direction under sub-Section (1) is received by the dealer.

4. The expenses of, and incidental to, the examination and audit of records under sub- Section (1) (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be final and default in such payment shall be recoverable from the dealer as tax and in the manner provided for the recovery of arrears of tax under this Act.

Other relevant references:

- The term "Commissioner" has already been defined in other relevant references to A.III of Part A.

- The term “Dealer” has already been defined in other relevant references to A.I of Part A.
- As per Section 48 of DVAT Act, 2004, “Records and accounts” means-

Section 48

(1) Every

(a) dealer;

(b) person on whom a notice has been served to furnish returns under Section 27 of this Act; shall prepare and retain sufficient records to allow the Commissioner to readily ascertain the amount of tax due under this Act, and to explain all transactions, events and other acts engaged in by the person that are relevant for any purpose of this Act.

(2) Notwithstanding the generality of sub-Section (1) of this Section-

(a) every registered dealer shall preserve a copy of all tax invoices issued by him;

(b) every dealer shall preserve the original of all tax invoices received by him; and

(c) every person who has paid an amount of tax, interest, penalty or other amount owed under this act, shall preserve a copy of the challan evidencing the making of the payment.

(3) The Commissioner may prescribe the manner and form in which accounts and records are to be prepared.

(4) If the Commissioner considers that such records are not sufficiently clear and intelligible to enable him to make a proper check of the obligations required of the person under this Act, he may require such person by notice in writing to keep such accounts (including records of purchase and sales) as may be specified therein.

(5) The Commissioner may, by notification in the official Gazette, direct any class of dealers, transporters or operators of warehouses to keep such accounts (including records of purchases and sales) as may be specified in the notification.

(6) Every person required to prepare or preserve records and accounts shall retain the required records and accounts for, at least, seven years after the conclusion of the events or transactions which they record unless any proceedings in respect of that year are pending in which case they shall

be preserved till the final decision in those proceedings. Any loss thereof shall be reported to the police and the Commissioner within a period of fifteen days from the date of occurrence.

- The term “Accountant” has already been defined in other relevant references to A.I of Part A.

Analysis

Under the DVAT Act, any dealer may be directed by the Commissioner to get his books of accounts and records examined and audited, in the specified circumstances. The special audit shall be carried out under this Section notwithstanding the fact that accounts of the dealer have already been audited under any other provisions of this Act or any other law for the time being in force or otherwise.

This audit is different from an audit by an accountant under **Section 49** and an audit by the Commissioner under **Section 58** of the DVAT Act.

III.1) Circumstances for audit u/s 58A

At any stage of the proceedings under this Act, the Commissioner may direct the dealer to get his accounts examined and audited under Section 58A of the DVAT Act, having regard to the nature and complexity of the business of a dealer and the interest of the revenue.

The Commissioner may direct the special audit only in the following specified circumstances-

- i) any proceedings under this Act has already been initiated;
- ii) the nature and complexity of the business of a dealer require so; and
- iii) it is in the interest of revenue.

III.2) Notice of Special Audit

A written Notice shall be served on the dealer for examination and audit of his records and books of accounts.

III.3) COMPETENT AUTHORITY TO CONDUCT THE SPECIAL AUDIT

Special Audit under this Section can be conducted by any of the following competent authorities:-

- By an Accountant,
- By a panel of Accountants,
- By any other professional,
- By a panel of professionals

Such competent authority shall be nominated by the Commissioner in this behalf.

The term “accountant” has been defined under Section 2(1) (a) of the DVAT Act and also includes a Chartered Accountant and a Cost Accountant.

III.4) Audit Report and stipulated time for furnishing the report

A report of the examination and audit of business affairs shall be prepared by the auditor, duly signed and verified by him. The format of the report shall be specified by the Commissioner.

The time period for furnishing the report shall also be specified by the Commissioner. The report shall be furnished to the Commissioner by the dealer.

The said period can be extended, by making an application in this behalf by the dealer and for any good and sufficient reason, to the Commissioner. The said period so extended **shall not, in any case, exceed 180 days** from the date on which the direction for carrying special audit is received by this dealer.

It is **important** to note that it is the responsibility of the dealer instead of auditor to furnish the audit report to the Commissioner.

III.5) Fees, incidental expenses etc.

Payment of the expenses of the examination and audit of records, and incidental to it, including the remuneration of the auditor, under this Section **shall be by the dealers as determined by the Commissioner** and that determination shall be final.

Any default by the dealer shall be recoverable as tax in the manner provided for the recovery of arrears of tax under this Act.

III.6) Opportunity of being heard

It is **not required** under Section 58A of the DVAT Act to provide reasonable opportunity of being heard to the dealer before issuing order for special audit by the Commissioner.

CASE: - TULIP TELECOM LTD. VS. GOVT. OF NCT OF DELHI (2009-10) 48 DSTC J- 359 (DEL)

It was held that notice shall be given by the authorities to the dealer before taking appropriate action u/s 58A of the DVAT Act, 2004 and appointing the special auditor.

CASE:-

**SAHARA INDIA (FIRM) VS. CIT (2008) 226 ELT 22 (SC),
RAJESH KUMAR VS. DY. CIT (2006) 287 ITR 91 (SC),
Judgment of Hon'ble Supreme Court in Binapani Dei**

It was held that when by principles of natural justice should be followed and opportunity of being heard should be provided to the person to whom notice u/s 58A of the Act has been issued.

A.V COMPARISON BETWEEN AUDITS UNDER DVAT ACT, 2004

	Section 49 (old)	Proviso to Section 49	Section 49 (new)	Section 58	Section 58a
Parti-culars	Turnover exceed the limit prescribed under Section 44AB of the income tax act, 1961	Commissioner may require a dealer or class of dealers to get their accounts audited	Form and period is not yet prescribed	Commissioner may requires so	The Commissioner so requires at any stage of the proceedings under the act having regard to nature & complexities of business
Notice	Not required	Not required		Required, in form dvat-37	Required, but no form is prescribed
Autho-rised person	A chartered accountant	An accountant defined u/s 2(1)(a) of dvat act, 2004		Vat department	A chartered accountant or cost accountant or any other professional nominated by the department
Areas covered	Books of accounts	Books of accounts		Business affairs	Records including books of accounts
Period covered	A financial year	As specified by the Commissioner		As mentioned in notice	As specified by the Commissioner
Format of audit report	As given u/s 44ab of income tax act 1961	As specified by the Commissioner		As directed by the Commissioner to vat officer	As specified by the Commissioner
Date of completion of audit	31 st december of the following year	As specified by the Commissioner		Not specified	Not specified

Date of submission of report	28 th january of the following year	As specified by the Commissioner		As directed by the Commissioner to vat officer	As specified by the Commissioner, subject to maximum of 180 days
Expenses of audit	To be borne by the dealer	No expenses		To be borne by the dealer	—

Part-B

INSPECTION AND ENFORCEMENT

B.1 INTRODUCTION-

The Delhi Value Added Tax Act, 2004 (DVAT-04) has empowered the **VAT authorities as defined u/s 66** of the DVAT-04, to inspect all records, books of account, registers and other documents maintained *and* to sought information from any *person*. Though the term “subject to such conditions as may be prescribed” has been mentioned in the Section 59(2) of the DVAT-04, but till date no conditions have been prescribed in the DVAT Rules, 2005.

VAT Authorities u/s 66

Value Added Tax Authorities and Appellate Authorities

- (1) For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.
- (2) To assist the Commissioner in the administration of this Act-
 - (a) the Government may appoint as many Additional Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary; and
 - (b) the Commissioner may, with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties;

In this Act referred to as “Value Added Tax Authorities”.

- (3) The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.
- (4) The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions under Section 84, the making of general rulings under Section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions.

B.II INSPECTION OF RECORDS (SECTION 59)

SECTION 59

1. *All records, books of account, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at **all reasonable times**, be open to inspection by the **Commissioner**.*
2. The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require-
 - a. Any **dealer**; or
 - b. *Any other person, including a banking company, post office, a person who **transports goods** or **holds in custody** for delivery to, or on behalf of any dealer, who maintain or has in his possession any books of account, registers or documents relating to the business of a dealer, and, in the case of a person which is an organization, any officer thereof;*

to-

 - (i) *Produce before him such records, books of account, registers and other documents;*
 - (ii) *Answer to such questions; and*
 - (iii) *Prepare and furnish such additional information;*

relating to his activities or to the activities of any other person as the Commissioner may deem necessary.

3. *The Commissioner may require a person referred to in sub-Section (2) above, to-*
 - a. *Prepare and provide any documents; and*
 - b. *Verify the answer to any question;*
in the manner specified by him.
4. *The Commissioner may retain, remove, take copies or extracts, or cause copies or extracts to be made of the said records, books of account, registers and documents without fee by the person in whose custody the records, books of account, registers and documents are held.*

Other relevant references

- “All reasonable times” has not been defined in the DVAT-04. The term reasonable times, in normal business language means normal working hours of the business of the day.
- The term “Commissioner” has already been defined in other relevant references to A.III of Part A.
- The term “Dealer” has already been defined in other relevant references to A.I of Part A.
- As per Section 2(z) (k) of DVAT Act, 2004, “Transporter” means any person who, for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, and includes any person whose business consists of or includes operating a railway, shipping company, air cargo terminal, inland container depot, container freight station, courier service or airline.
- “Holds in custody” i.e. warehouse operator has not been defined in the DVAT-04, but in normal parlance warehouse means any place where the goods are stored or kept. E.g. Cold Storage, Godown.

Analysis

II.1) Documents that can be inspected

Section 59(1) provides that all records, books of account, registers and all other documents maintained by a dealer, transporter or warehouse’s operator shall be open for inspection by the Commissioner, at all reasonable times.

II.2) Place of maintenance of Books and records

Rule 42(1) of DVAT Rules 2005 states that books and records shall be maintained and kept at the **principal place of business**.

II.3) Records to be maintained

The records as given in **Section 48 of DVAT Act, 2004 read with Rule 42 of DVAT Rules, 2005** are to be maintained.

II.4) Time period to retain/ preserve the accounts/records

Section 48(6) requires every person to prepare or preserve records and accounts for at least **seven (7) years** after the conclusion of events or transactions which they record.

And if any proceedings in respect of a particular year are pending, then the records and accounts of that particular year should be retained till the final conclusion of the proceedings.

II.5) Course of Action in the event of any loss of records/ accounts

The matter should be reported to the concerned police station and the respective Value Added Tax Officer.

II.6) Nature of information that may be asked

The Commissioner may ask the following information from the dealer or any other person in relation to the activities of the dealer himself or of any other person's-

1. Produce such records, books of account, registers and other documents before him;
2. Answer such questions and verification thereof;
3. Prepare and furnish such additional information; and
4. Prepare and provide any documents in the manner specified by him.
5. Any statistical information(Section 100)

II.7) Can information may be sought for the activities relating to some other person

Yes, according to Section 59 (2) (b), information can be sought for the activities of any other person also.

II.8) Powers of the Commissioner (Section 59(4))

The Commissioner is empowered to retain, remove, take copies or extracts, of the records, books of account, registers and documents by the person in whose custody the records, books of account, registers and documents are held, without payment of any fee.

II.9) Restrictions on the powers to prevent disturbance of the business

Application of mind by the VAT authorities is essential before issuing the notice under this Section. The VAT authorities must give due regards to the necessity of not distributing the business of the dealer unnecessarily before issuing the notice under this Section.

II.10) Penalty in case of failure

Section 86(14)- Any person who fails to produce such records, answer such questions, furnish additional information etc. as required in sub Section (2) and (3) of this Section shall be liable to pay, by way of penalty, a sum of Rs. 50,000/-

II.11) Gems of Judiciary

- It was held in the case of **Saligram & Co Vs. Dy. CT1994) 95 STC 189 Guj** that the inspector do not have the powers to call for the information and account for the year for which assessment has been completed.
- The inspecting team has no powers to verify the cash available at the business premises as per the decision of Orissa High Court in the case of **Supreme Motors Vs State of Orissa(1980) 46 STC452 (Orissa)**. As per **Mariyala Venkateshwara Rao (1951) 2 STC 167(Mad)**, Money/cash is not a goods which can be inspected.
- Tax can be collected only after completion of the assessment. The authorities cannot quantify and collect tax on the basis of the alleged

suppressed turnover in the books of account at the time of conducting survey. **K.M. PuttaSwamy Vs CTO (1988) 68 STC 241 (Kar).**

- Non production of books at the time of survey is not a reason for rejection of books of account when the books of account are produced at the time of assessment. **CST vs. Malik Singh Int Bhatta (1989) 75 STC 381 (All)**
- **CASE:- Standard Tin Industries Vs. CST (1991) 82 STC 222 (All)-**

It was held that rejection of books of account in a survey conduct at mid of the day is not justified as it is without ascertaining the semi- finished stock.

- Onus is on the Department to prove that the entries found in the loose papers pertains to transaction of sale. **Jaipur Motor Company Vs. CTO(1997) 107 STC380 (Raj Tri).**
- Presence of mens-rea is must for imposition of penalty. **Hindustan Steel Ltd. Vs State of Orissa 253 AIR 1970 (SC)**
- In the Case of **Concept and Devices Vs. State of Tamil Nadu (2010) 29 VST 41 (Mad),** it was held that the assessing officer was not bound by the instructions or directions of the higher authorities in completing an assessment as assessing officer was a quasi-judicial authority. Therefore, in the given case, since the assessing officer had acted based on the directions given by his higher authorities, the case was remanded back to AA for fresh examinations.
- **CASE:- Indian Railways Catering and Tourism Corporation Ltd. Vs. Govt. of NCT of Delhi 48 DSTC J-316 (Del)-**

It was held that imposition of Penalty by the assessing authority on the dealer without providing an opportunity of being heard is not valid under the Delhi Value Added Tax Act, 2004.

- In the Hon'ble Supreme Court judgement in **R.S. Dass Vs. U.O.I. (1986) Supp. SCC 617,** it was held that principles of natural justice need to be applied as per scheme of the VAT Act i.e. a notice should be served before assessment of tax and penalty due under the Act and an opportunity of being heard should be given by the Revenue after serving of Notice.
- **CASE:- CST Vs. Mohan Brickfield (2006) 148 STC 638 (SC)-**

Production of books of account at the time of assessment does not relieve the auditor from production of books of account at the time of survey. Non-production of books of account at the time of survey can be considered as a ground by the assessing officer to consider that books

of account have not been maintained in the regular course of business. The burden is on the dealer to show that books of account have been maintained in the regular course of business.

B.III SEARCH & SEIZURE OF RECORDS- SECTION 60 OF DVAT ACT, 2004

Section 60

1. All **goods** kept at any **business premises** by a **dealer, transporter or operator of a warehouse** shall at **all reasonable times** be open to inspection by the **Commissioner**.
2. Where the Commissioner, upon information in his possession or otherwise has **reasonable grounds to believe** that any person or dealer is attempting to avoid or **evade tax** or is concealing his tax liability in any manner and for the purpose of administration of this Act, it is necessary so to do, the Commissioner may-
 - a) Enter and search any business premises or any other place or building;
 - b) Break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not readily available;
 - c) Seize and remove any records, books of account, registers, other documents or goods;
 - d) Place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;
 - e) Make a note or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods; and
 - f) Seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle.
3. Where it is not feasible to remove any records, books of account, registers, other documents or goods, the Commissioner may serve on the owner and any person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with them except with the previous permission of the Commissioner.
4. Where any premises have been sealed under clause (f) of sub-Section (2), of this Section or an order made under sub-Section (3) of this Section,

the Commissioner may, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almira or other receptacle, permit the desealing or release thereof, as the case may be, on such terms and conditions including furnishing of security for such sum in such form and manners as may be directed.

5. The Commissioner may requisition the services of any police officer or any public servant, or both, to assist him for all or any of the purposes specified in sub-Section (2) of this Section.
6. Save as otherwise provided in this Section, every search or seizure made under this Section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

Explanation- The powers under this Section may also be exercised in respect of a dealer or a third party for the purposes of undertaking an audit or to assist in recovery.

Other relevant references:

- As per Section 2(1)(m) of DVAT Act, 2004, “goods” means every kind of moveable property (other than newspapers, actionable claims, stocks, shares and securities) and includes -
 - (i) livestock, all materials, commodities, grass or things attached to or forming part of the earth which are agreed to be severed before sale or under a contract of sale; and
 - (ii) property in goods (whether as goods or in some other form) involved in the execution of a works contract, lease or hire-purchase or those to be used in the fitting out, improvement or repair of movable property;
- The term “Business premises” has already been defined in other relevant references to A.III of Part A.
- The term “Dealer” has already been defined in other relevant references to A.I of Part A.
- The term “Transporter” has already been defined in other relevant references to B.II of Part B.
- The term “warehouse operator” has already been defined in other relevant references to B.II of Part B.

- The term “all reasonable times” has already been defined in other relevant references to B.II of Part B.
- The term “Commissioner” has already been defined in other relevant references to A.III of Part A.
- The term “reasonable grounds to believe” has not been defined under this Act. The tax authorities are empowered to search and seize provided they either have information or reasonable grounds to believe that the person is evading tax.

“Reasonable grounds to believe” is different from reasonable grounds of suspect. Commissioner must ensure that there is a evasion of tax or likely evasion of tax and it is necessary for him to exercise his powers given under Section 60 of the DVAT-04. It was held in the case of **Virendra Kumar Goel vs. State of West Bengal (1994) 94 STC 266 (WBTT)** that “reason to believe” puts a restriction on the administrative power and in the nature of compliance of rules of natural justice. It was held that the belief must be honest and on the reasonable grounds.

CASE:- Pukhraj Vs. D.R. Kohli, Collector of Central Excise AIR 1962 SC 1559

It was held that the “reasons to believe” should be viewed from the experienced eye of a well- equipped officer able to interpret the suspicious circumstances and to form a reasonable belief in that light.

CASE: - Virendra Kumar Goel Vs. State of West Bengal (1994) 94 STC 266 (WBTT)

It was held that right to inspect all books of account, registers and documents and all goods kept in any place of business and warehouses covers the power to search. The reason for seizure may be arrived at either in the course of inspection or as a result of discoveries made.

- Examples elaborating the term “Tax Evasion”-
 1. Lower charging of tax rates despite unambiguous entry in DVAT-04 Schedules or determination by the Commissioner.
 2. Non verification of purchase/sales invoices
 3. Non verification of G.R.
 4. Seizure of goods in vehicle, transporter, Warehouse or cold Storage

5. Submission of Fake statutory Forms
6. Nonpayment of Tax

CASE:- V. Laxmaiah Vs. ACTO (1990) 79 STC 144 (Kar)

It was held that if any dealer attempts to evade payment of tax then the Power of inspection, search and seizure can be invoked upon him. Attempts to evade tax are all matters which the authorized officer may verify on inspection, search or seizure, as the case may be, of the premises.

CASE: - State of West Bengal Vs. Oriental Rubber Works (1997) 39 STC 333 (Cal)

A seizure can also be made of the relevant document to a suspected case of evasion of tax and the necessity of seizing them for detention and prevention of such evasion.

CASE: - SMXL Klothing Pvt. Ltd. Vs. CTT

In this case, penalty equivalent to the amount of tax deficiency arose due to variation of stock and cash at the time of survey was imposed by the DVAT Tribunal.

CASE: - Grover Sales Vs. CTT (2010) 7 VSTI C367 (DVAT- Trib.)

Facts- At the time of survey, the Department found that the stock was short by Rs. 1,33,200/- i.e. 2% of the total value of stock and cash by Rs. 2,298/-. A demand of Rs. 5,546/- was created by the Department.

Decision- It was held that imposing Penalty of Rs. 1,00,000/- u/s 86(15) (i.e. Preparation of false or misleading or deceptive records and accounts or documents) would lead to harshness and therefore the penalty was reduced to Rs. 5,546/-.

However, penalty u/s 86(10) of Rs. 40,000/- was maintained. _

Analysis-

III.1) Legislative Powers of the Commissioner (Section 60(2))

Where the Commissioner, upon information in his possession or otherwise, has reasonable grounds to believe that any person or dealer is attempting

to avoid or evade tax or is concealing his tax liability in any manner and for the purpose of administration of this Act, it is necessary so to do, the Commissioner may-

- a. enter and search any business premises or any other place or building;
- b. break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not readily available;
- c. seize and remove any records, books of account, registers, other documents or goods;
- d. place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;
- e. make a not or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods; and
- f. seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle.
 - (ii) Where it is not feasible to remove any records, books of account, registers, other documents or goods, the Commissioner may serve on the owner and any person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with except with the prior permission of the Commissioner. (Section 60(3))
 - (iii) The Commissioner may requisition the services of any police officer or any public servant, or of both, to assist him for all or any of the purposes specified under Section 60(2). (Section 60(5))
 - (iv) The powers under this Section may also be exercised in respect of a dealer or a third party for the purposes of undertaking an audit or to assist in recovery. (Explanation to Section 60(6))

III.2) Whether Survey team can seal the premises

Yes, As per Section 60 (2) (f) Survey team has the powers to seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle. Normally, survey team does not seal the residential premises unless it is suspected that account books/records are kept there.

CASE: - T. G. Leisure & Resorts (P) Ltd .v. VATO, No. F. SCTT-III/ T&T/ obj/ 10/ 173-176, dated 23-Apr-12

Facts- Enforcement team of the DVAT department conducted a survey on the premises of a person. Based on the findings in survey AO passed orders against the person for period 2006-07 to 2009-10, based on irrelevant facts, u/s 32 & 33 of the act raising demand of tax of Rs.37,45,16,781/-, Interest of Rs. 16,76,81,116/- and Penalty of Rs. 58,39,85,146/- for the said years.

Grounds of objection- The following grounds of objections were raised by the person-

- The assessment for the A.Y. 2006-07 was time barred and therefore cannot be reopened.
- The assessment for the period of March-2010 was completed and no reasons were given to open the completed assessments, also the assessment was beyond the date of survey,
- No opportunity of being heard was given to the person,
- AO cannot apply the findings of enforcement team
- No evidence has been referred before enhancing the GTO,
- Evidence found for one year cannot be applied to further years unless they are linked,
- No receipt is given for the books and records seized and no witnesses were allowed at the time of survey,
- No copy of seized memo is duly signed by the person.

Decision- The Hon'ble Special Commissioner set aside the orders passed by AO for A.Y. 2006-07 to 2008-09 and remanded back the order for the period April 2009 to February 2010 to the AO for fresh consideration.

III.3) Procedure of Desealing of premises

The owner or the occupier or incharge of the shop, godown, box, locker, safe, almirah or other receptacle can make the application to the Commissioner u/s 60(4) ,who will permit the desealing thereof, on such terms and conditions including furnishing of security of such sum in such form and manner as may be directed. Draft Application for desealing of premises is given as

Annexure-B.

III.4) Validity of documents seized during illegal search

The documents or evidences prepared and obtained on search or seizure can be and relied on for the purpose of making the assessment even if a search and seizure of documents or account books is illegal. They have probative value and are public documents prepared by the public officer in the performance of his official duties. Law presumes that the proceedings so recorded are accurate and were made as reflected in the documents (**CASE: - Dy. CST Vs. C. Prasad (1994) 92 STC 361 (Ker)**).

III.5) Safeguards under the Code of Criminal Procedure to the dealer

Save as otherwise provided in this Section, every search or seizure made under this Section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that code. (Section 60(6))

As per Section 165 of the Code of Criminal Procedure, 1973, following safeguards shall be followed while carrying out search and seizure:-

- (i) The empowered officer must have reasonable ground to believe that anything necessary for the purpose of the recovery of tax may be found in any place within his jurisdiction;
- (ii) He must be of the opinion that such thing cannot be otherwise got done without undue delay;
- (iii) Grounds of belief must be recorded in writing; and
- (iv) So far as possible the thing must be specified, in such writing, for which search is to be made.

In case of non-compliance of these safeguards, search is deemed to be defective and anything recovered on such a defective search must be returned

III.6) De-sealing/release of premises/articles (Section 60(4) of the DVAT Act)

Where any premises have been sealed under clause (f) of Section 60(2), or an order made under Section 60(3), the Commissioner may, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or other receptacle, permit the de-sealing or release thereof (as the case may be) on such terms and conditions

including furnishing of security for such sum in such form and manner as may be directed.

III.7) Power to requisition the services of any police officer or any public servant

The Commissioner is empowered u/s 60(5) to requisition the services of any police officer or/and any public servant to assist him in carrying out search, sealing premises or other acts as defined in Section 60(2). This Power is analogous to the powers given to maintain law and order, to provide protection to the authorities who are making the search and to enable the Commissioner to make effective search in the interest of revenue.

B.IV INSPECTION & SEIZURE OF GOODS (SECTION 60 OF DVAT ACT, 2004)

The Section has already been reproduced in B.II and B.III of Part B.

Analysis-

IV.1) Power for inspection

Section 60(1) - All goods kept at any business premises by a dealer, transporter or operator of a warehouse shall at all reasonable times be open for inspection by the Commissioner.

IV.2) Power to seize-Evasion of tax

Section 60(2)(c)- The Commissioner may seize goods where he has reasonable grounds to believe that any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner based upon information in his possession or otherwise.

IV.3) Power to detain/seize for want of information

Section 64(1)- If any person on being required by the Commissioner fails to give any information in respect of any **goods in his possession** or fails to permit the inspection thereof, the Commissioner may seize any goods in his custody or possession in respect of which the default is committed.

Section 64(2)- The seizure shall remain in force until it is revoked or the person concerned furnishes the information required or makes proper arrangements for the inspection of the goods, whichever occurs first.

IV.4) Release of goods

It is important to note that there are no provision in the Act relating to release of goods on payment of penalty unlike Section 41 of the Delhi Sales Tax Act where goods could be released only after payment of penalty not exceeding three and a half times. Therefore, it will be possible for a dealer to release his goods on payment of tax and other sum due under the DVAT Act.

B.V SEARCH AND DETENTION OF GOODS VEHICLE- SECTION 61 OF DVAT ACT, 1961

Section 61

1. *To enable proper administration of this Act, the **Commissioner** may, at any check-post or barrier or at any other place, require the owner, driver or person in charge of a **goods vehicle** to stop the vehicle and keep it stationary so long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the goods carried, which are in the possession of such driver or person in charge.*
2. The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer in charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.

(2A) The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

*PROVIDED that where the owner, driver or person in charge of goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without **reasonable cause**, to carry such goods outside Delhi within the prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half time the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.*

3. *The owner, driver or person in charge of the goods vehicle shall, if required, inform the Commissioner of-*

- a. *his name and address;*
 - b. *the name and address of the owner of the vehicle;*
 - c. *the name and address of the consignor of the goods;*
 - d. *the name and address of the consignee of the goods; and*
 - e. *the name and address of the transporter.*
4. *If, on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner or driver or person in charge of such goods vehicle is not carrying the documents as required by sub-Section (2) of this Section or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing, do any one or more of the following, namely:-*
- a. *Refuse to allow the goods or the goods vehicle to enter or leave Delhi;*
 - b. *Seize the goods and any documents relating to the goods; and*
 - c. *Seize the goods vehicle and any documents relating to the goods vehicle.*
5. *Where the owner, driver or the person in charge of the goods vehicle-*
- a. *Requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and*
 - b. *Furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount; the goods vehicle, the goods and the documents so seized may be released.*

PROVIDED that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.

- (6) *The Commissioner may permit the owner, driver or person in charge of goods vehicle to remove any goods or goods vehicle seized under sub-Section (4) subject to an undertaking -*

- (a) That the goods and goods vehicle shall be kept in the office, godown or other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and
- (b) That the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner, and for this purpose the person in charge of the goods vehicle shall furnish an authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.
- (7) *Save as otherwise provided in this Section, every search or seizure made under this Section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.*
- (8) *Nothing contained in this Section shall apply to the rolling stock as defined in the Railway Act 1989 (24 of 1989).*

RULE 43

Records to be carried by a person in charge of a goods vehicle

1. *The owner, driver or person in charge of the **goods vehicle** shall carry the Transport Receipt in **Form DVAT-32**, sale invoice or delivery note in Form DVAT-33, and, as the case may be, export declaration in Form DVAT-34, import declaration in **Form DVAT-35** or transit slip in **Form DVAT 35A**.*
2. *For obtaining export or, as the case may be, import Declaration in **Forms DVAT-34** and **DVAT-35**, an application in Form **DVAT 46** shall be made to the Commissioner by the user dealer.*
3. *Account of the usage of Forms **DVAT 34** and **DVAT 35** shall be maintained by the user dealer in **Form DVAT 35B** which shall be open for inspection by the Commissioner and shall be filed with the Commissioner every quarter or with every new application for obtaining Form DVAT 34 and DVAT 35, whichever is earlier.*
4. *A declaration in Form **DVAT 34** or **DVAT 35** shall be in three parts. Each part shall be filled and signed by consignor, the consignee and the transporter, as the case may be. The owner, driver or person in charge of the goods vehicle shall keep with him such declaration forms in duplicate while carrying the goods. He shall submit the declaration forms in duplicate at the check post or barrier. The officer in charge shall*

retain the original part of such declaration and shall return to the owner, driver or person in charge of the goods vehicle, the duplicate part duly verified, signed and stamped. The duplicate part of such declarations shall be furnished by the user dealer to the Commissioner along with the account of such declaration maintained in Form DVAT 35B at the time of obtaining of additional declaration forms.

5. Where the goods vehicle entering Delhi, is bound for any place outside Delhi and passes through Delhi, the owner, driver or the person in charge of the goods vehicle shall furnish, in duplicate, to the officer in charge of the check post or barrier, a Transit Slip in duplicate in Form DVAT-35A duly filled, signed and verified. He will obtain from the officer in charge of the check post or the barrier one copy of the Transit Slip duly countersigned. The owner, driver or person in charge of the goods vehicle shall deliver within twelve hours of its entry into Delhi, the said countersigned copy to the officer in charge of the check post or barrier at the point of his exit from Delhi.
6. The owner, driver or his agent or the person in charge of the goods vehicle when required to furnish security under sub-Section (5) of Section 61 shall furnish security in the form and in the manner and subject to the conditions specified in rule 23. The security referred to in this sub-rule shall be furnished within the time specified in the order not exceeding seven days from the detention of the goods. The Commissioner shall issue to the depositor a receipt in **Form DVAT 47** acknowledging the receipt of the security.
7. The officer in charge of the check post or barrier detaining the goods shall make a report to the Commissioner about all the facts and circumstances of the case within twelve hours of the detention of the goods.
8. Where the goods detained are not released owing to the failure to furnish the security required to be furnished under sub-Section (5) of Section 61 within the specified time, the notified goods detained shall be sold by public auction after following the procedure as specified in **Rule 41**.

Explanation- For the purpose of this rule, unless the context otherwise requires, officer in charge of the check post of barrier shall also include any officer or any agent as may be empowered by the Commissioner.

Other relevant references:-

- The term "Commissioner" has already been defined in other relevant references to A.III of Part A.
- As per Section 2(1) (n) of DVAT Act, 2004, "goods vehicle" means a motor vehicle, vessel, boat, animal and any other form of conveyance used for carrying goods.
- As per **Rule 41** of DVAT Rules, 2005,

Procedures for sale of property held by the Commissioner

1. Where the Commissioner has in his possession any goods, goods vehicle, or any other property, including goods seized at any border or check-post and goods held as security for the performance of an obligation under the Act (in this rule called the property), which may be sold by the Commissioner in pursuance of any powers conferred under the Act to recover tax, interest, penalty or other amount due under the Act, the power of sale shall be exercised in the manner set out in this rule.
2. The Commissioner shall serve a notice in Form DVAT-29 in the manner prescribed in rule 62 on the person recorded as the owner of the goods in the Commissioners records requiring the person to redeem the property within fifteen days by tender of payment in cash of all amounts owed under the Act.
3. Where the person has not redeemed the property within the time specified in the form, the Commissioner may proceed to sell the property by public auction as per the following procedure-
 - a. A report shall be prepared of the facts and circumstances in which the property is required to be sold by public auction and the Commissioner shall make a written order for sale or disposal of the property.
 - b. The officer nominated by the Commissioner for the purpose shall cause to be published on the notice board of his office, a list of the properties intended for sale with a notice under his signature specifying the place where, and the day and hour at which, the property is to be sold and display copies of such list and notices at more than one public place near the place where the property is currently held, and the place of the proposed auction. A copy of the list and notice shall also be displayed in the office of the

Commissioner. Except in exceptional circumstances, a notice for not less than seven days shall be given before the auction is conducted.

- c. Intending bidders shall be required to deposit as earnest money, a sum equal to ten per cent of the estimated value of the property. The officer conducting the auction shall prepare a receipt acknowledging the receipt of the earnest money. Earnest money deposited by unsuccessful bidders shall be refunded to them immediately after the auction is over.
 - d. At the appointed day and time, the property shall be put up in one or more lots, as the officer conducting the auction sale may consider fit and shall be knocked down in favour of the highest bidder subject to confirmation of the sale by the Commissioner.
 - e. The purchaser shall pay the sale value of the property in cash immediately after the sale and he shall not be permitted to carry away any part of the property until he has paid for the same in full and until the sale has been confirmed by the Commissioner. If the purchaser fails to pay the purchase money within three days of the confirmation of sale by the Commissioner, the property shall be re-offered for auction and any earnest money deposited by the defaulting bidder shall be forfeited to the Government.
4. If any order directing detention is reversed on appeal, the property detained, to the extent they have not been sold before such reversal comes to the knowledge of the officer conducting the sale, shall be released or, if such property has been sold, the net proceeds thereof shall be paid to the owner of the property.
 5. Notwithstanding anything contained in this rule, if the property is of a perishable nature or subject to speedy and natural decay or when the expenses of keeping it in custody are likely to be high, the Commissioner may
 - a. reduce the time stated in sub-rule (2) within which the owner may redeem the property;
 - b. reduce the time for display of any notice; and
 - c. accelerate the time for the conducting the auction of the property.
 6. Where property is sold under the preceding sub-rules, the proceeds of sale shall be applied in the following order

- a. payment of any expenses of the sale, including tax arising under the Act by virtue of the sale, and other incidental charges;
- b. in respect of any surplus, payment of the amount of any tax, interest and penalty recoverable under the Act or Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Central Sales Tax Act, 1956 (74 of 1956) or The Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002);
- c. in respect of any surplus, on application made to the Commissioner and upon provision of sufficient proof, payment to the person who was the owner of the property; and
- d. in respect of any surplus, in the absence of any claimant, deposited in the Consolidated Fund of the National Capital Territory of Delhi.

CASE:- Comm. Of Wealth tax Vs. Jagdish Prasad Chaudhary, AIR 1996 pat 58

“Reasonable cause” means a cause which prevent a ordinary man of an ordinary prudence under normal circumstances, without negligence or inaction or want of bonafide from furnishing the return in time.

Analysis-

V. 1) Goods vehicles-Check-post and barrier

As per **Section 101** of the DVAT Act, 2004, Government may set up check-posts or/and barriers at any place in Delhi to prevent evasion of tax and other dues payable under this Act, by notification in the official Gazette. **Rule 43** of the DVAT rules, 2005 prescribes the format of documents required at the time of movement of goods. It is the responsibility of the transporters to maintain records and registers and provide information to the department.

CASE:- Kaml Kothari Vs. CTO (2001) 124 STC 45 (WBTT)

It was held that authorities have right to intercept the vehicle again and again, if there is an attempt to evade tax, and check the way bill and other documents.

CASE:- Bhabaneswar Singh Vs. CTO (2001) 122 STC 494 (Cal)

An illegal seizure is equivalent to deprivation of property. The assessing authority should not, at that stage, verify the actual market value *vis-à-vis* the value mentioned in the way-bill, if there exist no provision in the State Tax Laws for seizure of goods for under-invoicing, although the same value had been mentioned in different documents accompanying the consignment. He may only make a note thereof and send a report to the assessing authority for the purpose of assessment. Seizure is to be effected in accordance with law and only for the purpose of detection of evasion of sales tax, therefore the statutory authority must exercise its jurisdiction within the four corners of the statute. If due to under-invoicing, the dealer has not evaded any tax, the question of assessing the value of said goods would not arise.

V.2) Power to stop, search and detain goods vehicles

- (i) **Section 61(1)**- The Commissioner may require the driver, owner or person in charge of a goods vehicle to stop the vehicle at any check-post or barrier or at any other place and stay it there so long as may be required to:
- search the vehicle,
 - examine the contents therein, and
 - inspect all records relating to the goods carried, which are in the possession of such driver, owner or person in charge.
- (ii) **Section 61(4)**- If on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner or driver or person in charge of such goods vehicle is not carrying the documents as required by Section 61(2) or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing, do any one or more of the following, namely-
- a. Refuse to allow the goods or the goods vehicle to enter or leave Delhi;
 - b. seize the goods and any documents relating to the goods; and
 - c. seize the goods vehicle and any documents relating to goods vehicle.

However, as per Section 61(6), permission can be given by the Commissioner to the owner, driver or person in charge of goods vehicle to remove any goods or goods vehicle so seized subject to an undertaking-

- that the goods and goods vehicle shall be kept in the office, godown or other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and
- that the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner, and for this purpose, an authorization from the owner of the goods vehicle shall be furnished by the person in charge of the goods vehicle authorizing him to give such undertaking on behalf of the owner of the goods vehicle.

- (i) **Section 61(8)** - Section 61 of the DVAT Act shall not apply to the rolling stock as defined in the Railway Act 1989.
- (ii) **Section 61(7)**- Every search or seizure made under this Section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code subject to the provisions of this Act.

V.3) **Duties of driver or person in-charge of the goods vehicle**

- (i) **Section 61(2)**- The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried and produce the same before any officer in charge of a check post or barrier or any other office or any agent as may be empowered by the Commissioner.
- (ii) As per **Section 61(2A)** of the Act requires the owner, driver or person in charge of a goods vehicle entering or leaving Delhi to file a declaration in **Form DVAT -34 or DVAT-35 or DVAT-35A**, as the case may be, in the prescribed manner. The declaration shall be filed before the officer in charge of a check post or barrier or before any other officer or agent empowered.
- (iii) **Section 61(3)**- The Commissioner may require the driver, owner or person in charge of the goods to give information of-
- a. his name and address;
 - b. the name and address of the owner of the goods;
 - c. the name and address of the consignor of the goods;
 - d. the name and address of the consignee of the goods; and
 - e. the name and address of the transporter,

- (iv) **Section 65-** Every person shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the Commissioner's activities under this Act.
- (v) **Penalty :** In accordance with **Section 86(19)**, where goods are being carried by a transporter without the documents or without proper and genuine documents or without being properly accounted for in the documents referred to under **Section 61(2)**, he shall be liable to pay a penalty equal to amount of tax payable on such goods.
- (vi) **Vehicles passing Delhi:** If after filing a declaration in Form- **DVAT-35A** at the check post that the goods are meant to be carried to a place outside Delhi and the owner, driver or person in charge of a goods vehicle, fails, to carry such goods outside Delhi within the prescribed period (i.e. 12 hours), without any **reasonable cause**, then he shall, be liable to a penalty in addition to the payment of tax, if any.

The maximum amount of penalty shall be two and a half times the tax that would have been payable had the goods been sold inside Delhi or Rs. 1000/-, whichever is more. (Proviso to Section 61(2A))

V.4) Release of goods vehicle, goods and documents (Section 61(5))

Release of goods vehicle, goods and documents can be effected either by furnishing security or by payment of penalty.

(i) Release effected by furnishing security

The vehicles containing goods, the goods and the documents seized by Department may be released upon the request of owner, driver or the person in charge of the goods vehicle-

- (a) requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and
- (b) furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount.

The security shall be furnished by filing **Form DVAT -12**.

Rules 22(3) & 23(3)- Security shall be furnished for an amount equivalent to **twice the amount of tax payable**, in case of release of goods, if the goods were sold in Delhi. Moreover, security shall be at least **50% in the form of cash and balance may be in any of the form as specified in Table under Rule 23**.

Rule 43(6) - The said security shall be furnished maximum within 7 days from the detection of the goods or the time specified in the order. Acknowledgment of the receipt of the security shall be issued in **form DVAT-47 by the Commissioner to the depositor.**

(ii) Release effected by payment of penalty

Where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, **a sum equal to three and a half times the tax**, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same. **(Proviso to Section 61(5))**

V.5) Detention held to be unjustified

CASE:- Mohd.Habib Umman Vs. CST(1995) 99 STC 166 (Orissa)

Merely because the price at which the petitioners purchased their goods from outside the State was less, the check-post officer cannot arrive at the conclusion that there is evasion of tax.

CASE:- Pollachi Timber Merchants & Saw Mills Association Vs. State of Kerala (1999)112 STC 557 (Ker.)

It was held that an attempt to evade tax is required to sustain detention. So long as the assessee furnishes documents evidencing payment of sales tax, sale bill, or delivery note or certificate of ownership, the movement of goods cannot be prevented and goods cannot be detained.

CASE:- Amar Traders Vs. ACCT (1998) 111 STC 265 (AP)

If the officer is satisfied that the goods have been accounted for properly, then he has to issue a transit pass otherwise he is entitled to detain the goods. On suspicious that the goods may be sold inside the State, the goods were detained. The power of detention under the Act can be exercised only in cases where the goods have not been properly accounted for and there is an evasion of tax payable in respect of sale or purchase of goods.

CASE:-Utkal Galvanisers Limited Vs. CCT (1997) 104 STC 222 (Ori)

Action by the check-post officer cannot be taken on mere presumption or surmises.

CASE: - Ramesh Chawla Vs. CST (2003)132 STC 1 (SC)

If the prescribed forms have not been made available by the department, vehicle cannot be detained for not carrying these forms by the transporter.

CASE:- Mahender Singh Ahluwalia Vs. CTO (2008) 13 VST 30 (WBTT)

Facts- The CTO detained a truck on the ground of under-invoicing and imposed penalty.

Decision- It was held that the seizure of the goods was invalid since under invoicing had remained a paper allegation without any reason to believe, at the time of seizure, that the motive of the appellants was to evade payment of tax.

CASE:- Good Health Agro ech. Ltd. Vs. CTO(1996) 102 STC 226 (AP)

The State's powers to tax is derived from article 265 of the constitution and coercive demand made in the name of "tax" detaining vehicles *on the way* were held to be arbitrary extraction without authority of law and in violation of article 265 of the Constitution even though covered by necessary papers. The proper authority to determine what should and what should not constitute a public burden is the Legislature of the State.

CASE:-CST Vs. Mahendra Radio and Television (P) Ltd.(2001) 43 STI 552 (All)

The question as to whether the goods had moved in pursuance of any contract of sale and was inter-State sale or not, was to be decided in the assessment proceedings and it did not give jurisdiction to the STO to seize the goods and demand security for releasing the same.

CASE:-CTT Vs. Subhash Steel Trading Corporation (2001) 43 STI 576 (All)

It was held the Check Post Officer is not justified in detention of iron scrap, imported from Nasik, by the assessee of the U.P., on the ground that details of

scrap was not mentioned in the declaration form accompanied by the goods, if all other necessary documents were furnished by the assessee before him.

CASE:-CST Vs. Mac Dowell and Co. Ltd. (2001) 43 STI 583 (All)

It was held that if the goods were to be sold at a higher price, the same could be considered in regular assessment proceedings, provided goods were duly accompanied by all relevant documents, but it did not warrant seizure of goods on the ground that the same were undervalued.

CASE:- CTT Vs. Dharampal Singh (2001) 43 STI 446 (All)

It was held that the bill of goods was left by the driver at the originating city, by some inadvertent mistake, which was produced, as the goods were being transported within the same State and were liable to tax at single point, and as there was no intention to evade tax, detention of goods was not justifiable.

CASE:- Tarseem Singh Vs. Trade Tax Officer (2002) 126 STC 318 (UP)

Facts- The petitioner, a truck driver, was transporting a consignment of goods from Calcutta to Jalandhar (Punjab) and for this he had to enter the State of U.P. He, therefore applied for a trip sheet in terms of provisions of the U.P Trade Tax Act at the entry check-post at certain point in U.P. The officers at the check-post took a sample of the goods, recorded that good were not the same as described, detained them, and ultimately pass the seizure order.

Decision-Held that since the goods were meant for transport through the State of U.P., the petitioner rightly applied for the issue of a trip sheet. If in the opinion of the officer at any entry check-post, the goods loaded in the truck and mentioned in the trip sheet did not give correct description, he could have mentioned the correct test description in the trip sheet and issue the same to the transporter and send the necessary communication for the officer at the exit check-post. U.P. Rules empowers the officer-in-charge of the exit check-post to detain, unload and search the contents of the vehicle. Minor differences of opinion about the quality of the goods as shown in the document did not give any ground to the authorities to believe that the goods will be unloaded somewhere in the State of U.P. Moreover, the action of the authorities in detaining goods at the check-post for a long time is absolutely unjustified and without jurisdiction.

B.VI CUSTODY AND RELEASE OF RECORDS DURING SEIZURE- SECTION 62 OF DAVT ACT, 2004

Section 62-

(1) Where the **Commissioner** seizes any **books of account** or other documents, he shall give the **dealer** or the person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt so given to him.

PROVIDED that if the dealer or person from whose custody the books of account or other documents are seized refuses to give an acknowledgement, the Commissioner may leave the receipt at the premises and record this fact.

(2) The Commissioner shall keep in his custody the books of account, registers, other documents seized under Section 60 of this Act for a period not exceeding one year, and thereafter shall return the same to the dealer or person from whose custody or power they were seized;

PROVIDED that the Commissioner may, before returning the books of account, registers and other documents, require the dealer or the person, as the case may be, to give a written undertaking that the books of account, registers and other documents shall be presented whenever required by the Commissioner for any proceedings under this Act:

PROVIDED FURTHER that the Commissioner shall, when requested, allow the person whose books of account, registers and documents have been seized, reasonable access to the books of account, registers and documents for the purpose of inspection and shall allow the person the opportunity to make copies thereof at the persons own expense.

PROVIDED ALSO that the period of custody of the books of account, registers and other documents seized under Section 60 of this Act may be extended beyond one year if any proceedings under this Act are pending or for reasons to be recorded by the Commissioner in writing.

Other relevant references:-

- The term "Commissioner" has already been defined in other relevant references to A.III of Part A.
- The term "Dealer" has already been defined in other relevant references to A.I of Part A.

Analysis-

VI.1) Section 62(1)

The dealer or the person present on his behalf whose any books of account or other documents have been seized shall be given-

- a receipt for the same, and
- obtain acknowledgement of the receipt so given to him

by the Commissioner.

But, if the dealer or person from whose custody the books of account or other documents are seized **refuses to give an acknowledgment**, the Commissioner may leave the receipt at the premises and record this fact.

VI.2) Section 62(2)

The Commissioner shall kept in his custody the books of account, registers, other documents seized u/s 60 of the Act **for a period not exceeding one year**, and thereafter, he shall return the same to the dealer or person from whose custody or power they were seized.

However, if any proceedings under this Act are pending or for any other reason to be recorded in writing, the said period of custody of the books of account, etc. may be **extended beyond one year** by the Commissioner. (**Third proviso to Section 62(2)**)

VI.3) Access to seized books of account, registers and other documents-

The Commissioner shall allow the person whose books of account, registers and documents have been seized for the purpose of inspection, reasonable access to the books accounts, registers and documents, on a request made by him and shall allow him the **opportunity to make copies** thereof at the his own expense. (**Second proviso to Section 62(2)**)

CASE:- Kwalty Granites and Marbles Vs. The Registrar, TNTST (2006) 146 STC 25 (Mad)

At the time of an inspection by the Enforcement Wing at the business premises of the petitioner, certain documents were seized and a pre-assessment notice was issued by the assessing officer to the petitioner. The

petitioner made a request to the assessing officer to supply him the copies of the seized records, at his cost, so as to furnish his reply to the pre-assessment notice, which was rejected by the assessing officer on the ground that the same were provided by the Enforcement Wing. On a writ petition, it was held that admittedly the petitioner was given the opportunity to pursue the records by the Enforcement Wing officer would not be sufficient compliance with the principles of natural justice by the assessing officer. Since the petitioner was prevented from sending his effective reply to the pre-assessment notice, the order of assessment was made in violation of the principles of natural justice and therefore it was liable to be quashed.

VI.4) Undertaking from the dealer whose books of account etc. have been seized

A written undertaking shall be received by the Commissioner from the dealer or the person before returning the books of account, registers and other documents. The undertaking shall state that the books of account, registers and other documents shall be presented whenever required by the Commissioner for any proceedings under this Act. **(First proviso to Section 62(2))**

**B. VII CUSTODY, RETURN AND DISPOSAL OF GOODS & GOODS VEHICLE-
SECTION 63 OF DVAT ACT, 2004 READ WITH RULE 41**

SECTION 63

(1) Where the **Commissioner** seizes any **goods** or **goods vehicle**, he shall give the **dealer**, person in charge of the goods vehicle or a person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt so given to him:

PROVIDED that if the person from whose custody the goods or goods vehicle are seized refuses to give an acknowledgement, the Commissioner may leave the receipt in his presence and record this fact.

(2) The Commissioner

(a) shall keep any goods or goods vehicle seized under Section 61 in his custody;

(b) may retain them for such time as he considers reasonable; and

- (c) subject to sub-Section (3) of this Section, shall return the goods or goods vehicle to the dealer or other person from whose custody or power they were seized.
- (3) Where the Commissioner -
- (a) has seized any goods;
 - (b) has seized a goods vehicle; or
 - (c) holds any goods as security for the performance of an obligation under this Act; the Commissioner may, not sooner than one month after the service of notice on
 - (i) the person from whom the goods were seized;
 - (ii) the person from whom the goods vehicle was seized;
 - (iii) the person for whom the security was given; and
 - (iv) any person against whom the security is to be enforced; as the case may be, of his intention to sell the goods, direct the auction of such goods or goods vehicle to meet any arrears of tax, interest or penalty owed under this Act.
- (4) An auction of goods or a goods vehicle shall be carried out in the manner prescribed for the sale of property held by the Commissioner.

RULE 41

The Rule has already been produced at other relevant references to B.IV of Part B.

Other relevant references:

- The term "Commissioner" has already been defined in other relevant references to A.III of Part A.
- The term "goods" has already been defined in other relevant references to B.III of Part B.
- The term "goods vehicle" has already been defined in other relevant references to B.V of Part B.
- The term "dealer" has already been defined in other relevant references to A.III of Part A.

Analysis

VII.1) Acknowledgement of receipt Section 63(1)

The Commissioner shall give the dealer, person in charge of the goods vehicle or a person present on his behalf, as the case may be,-

- a receipt for the same, and
- obtain acknowledgement of the receipt so give to him on seizure of any goods or goods vehicle.

And if the person from whose custody the goods or goods vehicle are seized refuses to give an acknowledgement, the Commissioner may leave the receipt in his presence and record this fact.

VII.2) Report to the Commissioner by check post officer

Rule 43(7)- A report to the Commissioner about all the facts and circumstances of the case shall be made by the officer in charge of the check post or barrier detaining the goods, within twelve hours of the detention of the goods.

VII.3) Custody and return of goods Section 63(2)

The Commissioner-

- shall keep in his custody any goods or goods vehicle seized u/s 61,
- may retain them for such time as he considers reasonable, and
- shall return the goods or goods vehicle to the dealer or other person from whose custody or power they were seized subject to Section 63(3).

VII.4) Auction of goods Section 63(3) & (4)

(i) Circumstances

Auction of goods is carried out where-

- Commissioner has seized any goods or a goods vehicle, or
- Commissioner holds any goods as security for the performance of an obligation under this Act.

(ii) Purpose of auction

To meet any arrears of tax, interest or penalty owed under this Act.

(iii) Notice of auction

A notice of auction shall be served by the Commissioner, directing auction of the goods or goods vehicle, not sooner than one month to the following, as the case may be,-

- a. the person from whom the goods were seized;
- b. the person from whom the goods vehicles was seized;
- c. the person for whom the security was given; and
- d. any person against whom the security is to be enforced.

(iv) Manner of auction (goods, goods vehicle, or any other property)**Section 63(4) read with rule 41**

Section 63(4) - An auction of goods or a goods vehicle shall be carried out in the manner as prescribed for the sale of property held by the Commissioner.

Rule 41(1)- Where the Commissioner has in his possession any goods, goods vehicle, or any other property, including goods seized at any border or check-post and goods held as security for the performance of an obligation under the Act, which may be sold by the Commissioner in pursuance of any powers conferred under the Act to recover tax, interest, penalty or other amount due under the Act, the power of sale shall be exercised in the manner set out this rule.

VII.5) Notice to owner of goods as per Commissioner's records (Rule 41(2))

The Commissioner shall serve a notice in **Form DVAT-29** in the manner prescribed under Rule 62 on the person recorded as the owner of the goods in the Commissioner's records requiring the person to redeem the property **within fifteen days** by **payment in cash** of all amounts owed under the Act.

VII.6) Consequence of Non-compliance of Notice- Sale of Property
(Rule 41(3))

If the person does not redeem the property within the time specified in the form, the Commissioner may proceed to sell the property by public auction i.e.-

- a. A **report** of the facts and circumstances in which the property is required to be sold by public auction shall be prepared.
- b. A **written order for sale** or disposal of the property shall be made by The Commissioner.
- c. The Commissioner shall nominate an officer for this purpose who shall publish on the notice board of his office a **list of the properties** intended for sale with a **notice** under his signature specifying the place, the day and time at which the property is to be sold.
- d. The **copies of such list and notices** shall be displayed at-
 - more than one public place near the place where the property is currently held,
 - the place of the proposed auction, and
 - in the office of the Commissioner.
- e. A **notice of not less than 7 days** shall be given before the auction is conducted except for exceptional circumstances.
- f. Intending bidders shall be required to deposit as **earnest money** a sum equal to 10% of the estimated value of the property.
- g. A receipt acknowledging the **receipt of the earnest money** shall be given by the officer conducting the auction.
- h. **Earnest money** deposited by unsuccessful bidders shall be **refunded** to them immediately after the auction is over.
- i. At the appointed day and time, the property shall be put up in one or more lots, as the officer conducting the auction sale may consider fit and shall be knocked down in favour of the **highest bidder** subject to confirmation of the sale by the Commissioner.
- j. The sale value shall be paid by the purchaser of the property in cash immediately after the sale. No carry away of the property shall be allowed until he has paid for the same in full and the sale has been confirmed by the Commissioner.

- k. If the purchaser **fails to pay purchase money within 3 days** of the confirmation of sale by the Commissioner, the property shall be re-offered for auction and earnest money deposited by the defaulting bidder shall be forfeited to the Government.

VII.7) Property of perishable nature (Rule 41(5))

If the property is of a perishable nature or subject to speedy and natural decay or when the storing cost are likely to be high, the Commissioner may-

- a) reduce the time stated under rule 41(2) within which the owner may redeem the property;
- b) reduce the time for display of any notice; and
- c) speed up the time for conducting the auction of the property.

VII.8) Detention order reversed in appeal

If any order of detention is reversed on appeal, the property detained shall be released or, if such property has been sold, the net proceeds thereof shall be paid to the owner of the property. [Rule 41(4)]

VII.9) Priority to be given for application of sale proceeds (Rule 41(6))

The proceeds from sale of property shall be applied in the following order-

- a) payment of any expenses of the sale, including tax on sale arising under the Act and other incidental charges;
- b) Payment of amount of any tax, interest and penalty recoverable under the Act or Delhi Sales Tax Act, 1975 or Delhi Sales Tax on Works Contract Act, 1999 or Central Sales Tax Act, 1965 or The Delhi Sales Tax on Right to Use Goods Act, 2002;

Any surplus left shall be paid to the person who was the owner of the property, on application made to the Commissioner and upon provisions of sufficient proof; and

In the absence of any claimant, deposited in the Consolidated Fund of the National Capital Territory of Delhi.

VII.10) Duties of Officer- in- charge (Rule 65 of DVAT Rules, 2005)

The Commissioner can appoint an officer or other person to exercise any of the powers under this chapter of the Act, in relation to investigation and enforcement. The authority to exercise the powers shall be granted in **Form DVAT-50** and shall be issued by the person empowered by the Commissioner in this regard. The authorization is valid for 3 years from the date of issue, unless renewed for a further period.

The authorization in Form DVAT-50 shall be carried by every officer or other person, so authorized by the Commissioner, with him when exercising any of the powers conferred under this Chapter of the Act and produce the same if requested by the owner or occupier of any premises where he exercises these powers.

B.VIII DETENTION OF GOODS PENDING DISCLOSURE Section 64 of DVAT ACT, 2004

Section 64

- (1) If any person on being required by the **Commissioner** fails to give any information in respect of any **goods** in his possession or fails to permit the inspection thereof, the Commissioner may seize any goods in his custody or possession in respect of which the default is committed.
- (2) The seizure shall remain in force until it is revoked or the person concerned furnishes the information required or makes proper arrangements for the inspection of the goods, whichever occurs first.

Other relevant references:

- The term “Commissioner” has already been defined in other relevant references to A.III of Part A.
- The term “goods” has already been defined in other relevant references to B.III of Part B.

Analysis

VIII.1) Powers of Commissioner

As per Section 64 of the Act, the Commissioner is empowered to seize any goods in the custody or possession of a person.

Section 64(1) empowers the Commissioner to seize goods in the custody or possession of any person, if he **fails to give information or permit the inspection thereof**. Both the conditions are to be collectively satisfied to attract the provisions of this sub-Section.

VIII.2) Period of seizure

Section 64(2) provides that such seizure shall remain in force until it is revoked or such person furnishes information or make arrangement for the inspection of goods whichever is earlier.

B.IX Obligation to Provide Reasonable Assistance Section 65 of DVAT Act, 2004

Section 65

Every person shall provide all **co-operation** and **reasonable assistance** to the Commissioner as may be required to conduct the Commissioners activities under the Act.

Other relevant references:

- The term “Co-operation” has not been defined in the Act. As per common parlance, “Co-operation” means unity of action to a common end or a common result, not merely joint or simultaneous action.
- The term “reasonable assistance” has not been defined in the Act. As per common parlance, “reasonable assistance” means the assistance that a reasonably prudent person would provide under the circumstances.

CASE:- S. Raghbir Singh Sandhawalla Vs. Comm. Of Income Tax, AIR 1958 Pun 250, 254

The word reasonable assistance means rational according to the dictates of reason and not excessive or immoderate. An Act is taken to be reasonable when having regard to the fact of particular controversy, it is conformably agreeable to reason.

CASE:- National housing bank (53 of 1987), S.36C (c)

It was held that the word 'Assistance' means any direct or indirect financial assistance granted, by an approved institution during the course of any housing finance activity undertaken by it.

B.X Relevant Annexures**Annexure-A****DVAT-37****Reference no << Reference number>>**

To

_____ (Name of the dealer)

_____ (Address of the dealer)

_____ (Registration Number/TIN of the dealer)

Notice for Audit of Business Affairs

Whereas I am satisfied that an audit of your business affairs as a dealer is required to be undertaken for the period _____ to _____.

You are hereby directed to attend at _____ (place) on _____ (date and time) and produce/ cause to be produced the books of account and all evidence on which you rely in support of returns filed by you (including tax invoices, if any) and in addition produce or cause to be produced the following documents:

- 1.
- 2.
- 3.

Please take note that in the event of your failure to comply with this notice; the audit of the business affairs for the instant period would be made to the best of my judgment, without any further notice.

(Signature)

(Designation)

(Place)

(Date)

Department of Trade and Taxes

Note: - Please quote your Registration No./TIN while communicating with the Delhi VAT Department in this matter or in any other matter whatsoever.

Annexure- B

Draft of the Application to be made to the Commissioner (through VATO, Enforcement/survey) for desealing of premises

The VATO (Enforcement/Survey Team)
Department of trade & taxes,
Vyapar Bhawan,
New Delhi

Sir,

Re: Name and address of the person

Sub: Application for desealing of premises

Respectfully, I/we Submit as under:

1. That a survey/ enforcement team had visited our premises on
2. That our premises / box/locker/safe/almirah/any other (please specify)has been sealed by them due to
 - Non Availability of keys
 - Non availability of Proprietor/ Partner/ Director/ Authorised Signatory/ Occupier/ Incharge
 - Non availability of records/books of account
 - Any other reason (Please Specify)
3. That our business is suffering due to aforesaid sealing.
4. That we are ready to comply with any directions (including furnishing of security through surety bonds/any other form) given by Your Good self.

Your Honour is requested to issue directions in this regard at the earliest.

Thanking you,

Yours faithfully,

B.XI Penalties prescribed for various defaults

S.N.	Section	Defaults	Amount of Penalty
A	86(4)	Fails to apply for Registration within one month from the day on which the requirement arose [other than casual dealer]	Rs. 1000/- per day, from the day [immediately following the expiry of the said period] until the person makes an application for registration in the prescribed form, containing such particulars & information & accompanied by fee, security and other documents; Maximum-Rs. 1,00,000/-
B	86(5)	Not filing information u/s 21(1) for amendment in registration	Rs. 100/- per day of default; Maximum – Rs. 5,000/-
C	86(6)	Fails to apply for cancellation of RC u/s 22(2)	Rs. 100/- per day of default; Maximum – Rs. 5,000/-
D	86(6)	Fails to surrender RC u/s 22(7)	Rs. 100/- per day of default; Maximum – Rs. 5,000/-
E	86(7)	Any person falsely representing himself to be a registered dealer	Higher of the amount equal to the amount of tax wrongly collected or Rs. 1,00,000/-
F	86(8)	Fails to comply with the conditions of voluntary Registration already granted to him u/s 18(4) or has failed to undertake activities which would make him a dealer within the period specified in his application	Rs. 10,000/-
G	86(9)	If a person required to furnish a return under Chapter V: fails to furnish any return by the due date; or fails to furnish with a return any other document that is required to be furnished with the return; or being required to revise a return already furnished, fails to furnish the revised return by the due date.	Rs. 100/- per day from the day immediately following the due date until the failure is rectified; Maximum – Rs. 10,000/-

H	86(10)	Any person who furnishes a return under this Act which is false, misleading or deceptive in a material particular; or omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular	Higher of Rs. 10,000/- or the amount of the tax deficiency.
I	86(11)	Any dealer who has claimed tax credit u/s 14 to which he is not entitled; or has claimed a greater tax credit u/s 14 than is allowed	Higher of Amount of tax credit so claimed or Rs. 10,000/-
J	86(12)	Where a Tax Deficiency arises in relation to a person [subject to Section 87(2 to 4) given in the next para]	Higher of 1% of the tax deficiency per week or Rs.100/- per week, for the period of default,
K	86(13)	Where a person who fails to prepare the required records and accounts ; or fails to retain the records & accounts for the prescribed period.	Higher of Rs. 50,000/- or 20% of the tax deficiency
L	86(14)	Any person who fails to provide documents as per Section 59(2) or 59(3)	Rs. 50,000/-
M	86(15)	Preparation of false or misleading or deceptive records and accounts or documents	Higher of a sum of Rs. 1,00,000/- or amount of tax deficiency,
N	86(16)	Where a person has issued a tax invoice or retail invoice with incomplete/incorrect particulars or having issued a tax invoice or retail invoice, has failed to account it correctly in his books of account	Higher of Rs. 5,000/- or 20% of the tax deficiency
O	86(17)	Where a person, who is not authorized under DVAT Act to issue a tax invoice, has issued a tax invoice for a sale	Higher of Rs. 1,00,000/- or amount of tax deficiency.

P	86(18)	If any dealer liable to have his accounts audited under Section 49 fails to furnish a true copy of such report within the prescribed time	Rs. 10,000/-
Q	86(19)	Where goods are being carried by a transporter without the documents or without proper and genuine documents or without being properly accounted for in the documents referred to under Section 61(2)	40% of the value of goods (substituted for "Amount of tax payable on such goods" with effect from 18.06.2012 vide Delhi VAT (Second Amendment Act) 2012 dated 15.06.2012)
R	86(20)	Any person makes a statement to the Commissioner which is false, misleading or deceptive in a material particular; or omits from a statement made to the Commissioner any matter or thing without which the statement is false, misleading or deceptive in a material particular	Higher of Rs. 50,000/- or amount of tax deficiency
S	86(21)	Any casual dealer fails to apply for Registration within the stipulated period	Rs. 5,000/-per day, from the day immediately following the expiry of the due date until the person makes an application for registration; Maximum – Rs. 1,00,000/-
T	86(22)	If a casual trader required to furnish a return under the Act: fails to furnish any return by the due date; or fails to furnish with a return any document that is required to be furnished with the return	Rs. 1,000/- per day from the day immediately following the due date until the failure is rectified; Maximum – Rs. 10,000/-

U	86(23)	Where any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails- to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or to ensure that all such participants in the exhibition-cum-sale have obtained Registration under this Act and paid due tax; or to permit inspection of the business premises or goods or account and records of the participants; or to permit inspection of the account and records of the organizer in respect of the exhibition-cum-sale.	Higher of Rs. 50,000/- or a sum equal to the amount of tax payable on such goods if such goods were sold in Delhi,
V	36A(5A)	If any person fails to furnish to the contractor the certificate of TDS within 7 days of making payment or discharge	A sum of Rs. 100/- per day from the date of payment until the failure is rectified; Maximum-Rs. 20,000/-
W	36A(8)	If any person fails to make a deduction or after making a deduction fails to deposit the amount so deducted	A sum not exceeding twice the amount deductible
X	36A(12)	Any person who fails to comply with the requirement under Section 36A(11) – Failure to apply for T.A.N. or file T.D.S. Return	A sum of Rs. 200/- per day from the day on which requirement arose until the failure is rectified; Maximum – Rs. 20,000/-
Y	95(4)	Fails to communicate the name of manager or his permanent account number	Rs. 10,000/-
Z	70(5)	Failure to comply with the requirements in a notification issued by the Commissioner	Rs. 10,000/- [<i>increased from Rs. 500/- w.e.f. 18.06.2012</i>]

B.XII Forms under DVAT

Form No.	Description
DVAT 01	Application for opting for Composition Scheme by a Registered Dealer.
DVAT 02	Application for Opting for Composition Scheme by a Registered Dealer during Transition.
DVAT 03	Application for Withdrawal from Composition Scheme.
DVAT 04	Application for Registration under Delhi Value Added Tax Act, 2004.
DVAT 05	Notice Proposing Rejection of Registration Application.
DVAT 06	Certificate of Registration under Delhi Value Added Tax Act, 2004.
DVAT 07	Application for Amendments in Particulars Subsequent to Registration under Delhi Value Added Tax Act, 2004.
DVAT 08	Amendment of Existing Registration.
DVAT 09	Application for Cancellation of Registration under Delhi Value Added Tax Act, 2004.
DVAT 10	Show Cause Notice for Cancellation of Registration.
DVAT 11	Cancellation of Registration.
DVAT 12	Form for Furnishing Security.
DVAT 13	Application for Return, Release or Discharge of Security.
DVAT 14	Notice for Forfeiture and Insufficiency of Security.
DVAT 15	Order of Forfeiture of Security.
DAVT 16	Filing of Return Form.
DVAT 17	Composition Tax Return Form under Delhi Value Added Tax Act, 2004.
DVAT 18	Statement of Tax Paid Stock in Hand on 1 April,2005.
DVAT 19	Statement of Trading Stock and Raw Material as on the Date of Registration.
DVAT 20	Challan for Delhi Value Added Tax.
DVAT 21	A Notice for Furnishing Security for Granting Refund.
DVAT 22	Refund Order.
DVAT 23	Delhi Value Added Tax Refund Form.
DVAT 24	Notice of Default Assessment of Tax and Interest under Section 32
DVAT 25	Recovery Certificate
DVAT 26	Continuation of Recovery Proceedings
DVAT 27	Notice for Special Mode of Recovery under Section 46 of the Delhi Value Added Tax Act, 2004
DVAT 28	Summons to Appear in Person/or to Produce Documents
DVAT 29	Notice for Redeeming Goods
DVAT 30	Specimen of Purchase/Inward Branch Transfer Register
DVAT 31	Specimen of Sales/Outward Branch Transfer Register
DVAT 32	Goods Transport Receipt
DVAT 33	Delivery Note
DVAT 34	Export Declaration

DVAT 35	Import Declaration
DVAT 36	Undertaking-cum-Indemnity by Purchasing Dealer
DVAT 37	Notice for Audit of Business Affairs
DVAT 38	Objection Form under Delhi Value Added Tax Act, 2004
DVAT 39	Application for Condonation of Delay under Delhi Value Added Tax Act, 2004
DVAT 40	Decision of the Commissioner in Respect of an Objection
DVAT 41	Notice of Delay in Deciding an Objection
DVAT 42	Application for Determination of Specific Question under Delhi Value Added Tax Act, 2004
DVAT 43	Certificate of Deduction of Tax at Source under Delhi Value Added Tax Act, 2004
DVAT 44	Application for allotment of Tax Deduction Account Number (TAN) under Delhi Value Added Tax Act, 2004
DVAT 45	Tax Deduction Account Number (TAN) Certificate under Delhi Value Added Tax Act, 2004
DVAT 46	Application for Obtaining Form DVAT34 or DVAT 35
DVAT 47	Receipt for Security Deposited under Sub-Section (5) of Section 61 of the Delhi Value Added Tax Act, 2004
DVAT 48	Form of Annual Return by the Contractee for the year
DVAT 49	Certificate of Enrolment as a Value Added Tax Practitioner
DVAT 50	Grant of Authority by the Commissioner
DVAT 51	Annual Return Statement of Exports/Inter-state Sales/Branch Transfer for the year
DVAT 52	Declaration of Permanent Account Number under Section 95
DVAT 53	Statement of Partly Executed Works Contracts as on 31 March 2005, where the Contracts during the Period Ending
DVAT 54	Details of Partly Executed Contracts as on 31 March 2005 which have been executed during the Tax Period Ending
DVAT 55	Intimation for Change of Tax Period
2A	Summary of Purchase/Inward Branch Transfer Register
FORM 2	Summary of Sale/Outward Branch Transfer Registers