Office of the
Commissioner of Sales Tax.
Maharashtra State, 8th Floor,
Vikrikar Bhavan, Mazgaon,
Mumbai-400 010.

INTERNAL CIRCULAR

(RESTRICTED CIRCULAR FOR OFFICE USE ONLY)

No. ACST (PT & AA)/Best Judgment/Guideline/2018 dated 29 May 2018

Internal Circular No. 13 A of 2018.

To,

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Subject	:	**Guidelines with regards to passing Assessment Orders.**
Ref.	:	Internal Circular No. 14A of 2016 dated 21st December 2016

1. BACKGROUND:

1.1. Section 23 of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as the "MVAT Act") VAT Act provides for assessments under various contingencies. The Best judgment assessments are inevitable in certain circumstances as specified in section 23 of the MVAT Act.

1.2. However, in case the best judgment assessments are done without considering the available record and data and without application of mind results into huge demands that are difficult to recover. Courts have also taken strict view about the best judgment assessment orders. It is, therefore, imperative to fairly determine the liability and assess to the best of the judgment, even when the dealer,-

(a) fails to attend at any time during the assessment proceedings including the final proceeding; or

(b) fails to submit the requisite documents, information etc.

1.3. Some guidelines regarding best judgment assessment orders have already been issued vide Internal Circular no. 14A of 2016. In continuation to guidelines in that circular, following instructions are issued:

2. **SERVICE OF NOTICE:**

2.1. Proper service of notice for the purpose of assessment is vital and therefore the procedure laid down in rule 87 of the MVAT Rules, 2005 shall essentially be adhered too. A Notice for assessment may be served at Place of Business or the Additional or the Place of Residence of the Proprietor, Partner or the Director etc. For service of the said Notice the efforts should be taken to find out the appropriate address from dealers profile in department's computerized system.

2.2. Due care should be taken while serving the Notice of assessment in each assessment case. A Notice should be served appropriately to the regular employee of the company/firm or to the concerned proprietor/partner /director. In case the dealer is not available at the last known place of business then a report to this effect is required to be taken from the Sales Tax Inspector or other official. In such cases the notice for the assessment may be served at the residence of the concerned proprietor/partner /director as mentioned in the registration record of the said dealer.

2.3. In case of dealer is not responding to the notices or the physical service of the assessment notice is not possible, then, an attempt should be made to serve the said notice through registered e-mail ID and other known e-mail IDs available at the GST profile of the said dealer. The alternate mode of service of Notices can also be adopted like through RPAD.

2.4. The cases where dealer has failed to respond even once, should be visited by the STI.

2.5. Whenever dealer fails to respond to the notice the service of which is confirmed from the available record, an attempt should be made to contact the dealer through email/telephone/mobile in order to confirm the service of notice.

2.6. If a dealer informs about non-receipt of notice, then his correct address is required to be noted and the assessment notice should be sent on the said address. Details about the dealer can also be obtained by contacting concerned Chartered Accountant, STP, Advocate etc. who have attended in earlier year's proceedings.

2.7. At least one reminder should be given to the dealer, before an *ex-parte* show-cause notice is issued to the dealer.

2.8. *Ex-parte* show-cause notice should be accompanied with the working of tax liability to the best of the judgement of Assessing officer. The quantum of disallowances and reasons for the same should be mentioned appropriately, in the said working.

2.9. In case of part verification, reminder or show cause notice should contain details of pending verification and documents to be produced.

3. **MAINTAINING PROCEEDING SHEET :-**

3.1. During the assessment proceeding attendance of the dealer or his representative should be recorded appropriately and scrupulously every time the dealer or his authorised representative attends. The details of the books of accounts and documents produced for verification and submissions made during the hearing should also be noted on the proceeding sheet.

3.2. The details of the requirements such as declaration, documents, invoices or other evidences in support of the various claims made and not produced during the assessment proceedings should also be mentioned in the proceeding sheet.

4. **GRANT OF ADJOURNMENTS :-**

4.1. Adjournments for long periods leads to break in continuity of process of assessment. Loss of awareness of pending issues by both the dealer and assessing officer leads to repetitive verification. Hence, adjournment usually should not be given for a period of more than 10 days.

4.2. In case the dealer does not produce the requisite information as called for or makes part submission and asks for adjournments in such circumstances it shall be ensured that in no case the adjournment exceeds three times either continuously of intermittently. In other words, in the event the dealer seeks the three [Four in case of LTU dealers and dealers assigned to the DC (Assessment)] adjournment as above, then in all such cases the third adjournment shall be followed by the issuance of Ex-partee show cause with the working of the tax liability.

4.3. An adjournment be allowed on the request of the dealer provided that it is supported by the valid reasons. The reasons for the adjournment as sought by the dealer should be mentioned on the proceeding sheet. The due care shall be taken to ensure that adjournment is not given without any valid reasons. As mentioned above, Except for the LTU and DC (Assessment) cases, not more than four total adjournments be given.

5. **GUIDELINES FOR PASSING JUDICIOUS ASSESSMENT ORDERS:**

5.1. **Determination of turnover of sales: -**

(a) Consolidation of returns and Audit Report in Form 704 are two important sources of information based on which Gross Turn-over of sales and purchases of the dealer may be determined.

(b) In addition to this, the previous assessment file and assessment orders will also throw some light about the determination of turn-over and the deductions claimed etc. These details may be used for determination of GTO of sales and purchases.

(c) If Audit Report in Form 704 is available for the said period, enhancement of turnover, over and above stated in the Audit Report in Form 704, shall be done only when documentary evidence are available on the record to support such enhancement.

(d) In any case, the enhancement made on the strength of aforesaid grounds in turnover of sales/purchases, should be justified by assessing officer.

5.2. **Claim of deduction other than statutory declaration Forms:**

(a) In the best judgment assessment orders, there has been tendency to disallow the entire claims of deductions like goods return, labour etc.

(b) The disallowances should be rational and supported by the submission made in the Audit Report in Form-704 and previous assessment order.

(c) The proportion of disallowance in the previous year's assessment order (if it is not best judgment order) may be considered while allowing such deduction in the best judgment order.

5.3. **Deductions and concessional rate of tax in respect of statutory declarations: -**

(a) In case of deductions wherein statutory declarations/ certificates like Form C, E, H, I, F are mandatory, deduction should be given only to the extent of such declarations/certificates meets the requirement given in the CST Rules and are available on record.

(b) Concessional rate of 2% could be allowed in respect of turnover of sales for which C Forms are available on record and the evidences supports the inter-State movement of the goods.

5.4. **Rate of Tax: -**

(a) Many a times, it is seen, in the best judgment assessment orders, there is a tendency to levy tax at a higher rate on entire turnover of sales. While deciding the higher rate of tax, in the best judgment assessment cases, the appropriate record such as Audit Report in Form-704, earlier assessment record needs to be verified.

(b) The facts leading to the levy of tax at higher rate shall be brought on the record appropriately and only on the proper justification the turn-over should be subjected to higher rate of tax. The show-cause notice issued in this behalf should also explain the reasons for levy of tax at the higher rate.

5.5. **Grant of set-off :-**

(a) In the best judgment assessment orders, set-off may be allowed based on matching reports available on the computerized system of the department.

(b) Input Tax Credit risk parameters intimated by EIU should be considered while computing the eligible set-off.

5.6. **Payment of Tax: -**

(a) Details of payment of tax available on the computerized system of the department should be checked and credit may be given accordingly.

(b) The Assessing officer shall ensure that the credit of the payment as available on the Departments system is given. The Annexure-A of the Audit Report in Form-704 shall be taken into consideration for giving the credit of the payments made. In case the proposed additional demand is on account of short payment then the same shall be brought to the notice of the said dealer through show-cause notice so issued.

(c) The Assessing Officer shall ensure that the credit of the payment available on the Departments system is given.

5.7. **Penalty: -**

(a) It has been observed that in many cases penalty is imposed equal to amount of tax, due to which huge demand is created. Penalty has to be imposed judiciously, considering the facts and circumstances of the case.

(b) Wherever applicable, proper show cause notice with reasons for imposition of penalty should be given before imposing penalty.

5.8. **Part submission made by the dealer: -**

(a) In many of the cases, dealer makes part submission and fails to attend and produce details regarding few aspect of assessment. In such cases, best judgment should be used only with respect of pending aspects where dealer has not made appropriate submissions.

(b) Assessing officer must consider the documents statements, evidences and submissions made during the course of assessment proceedings.

5.9. **Computation of Taxes :-**

(a) Computation of taxes should be based rational understanding based on Audit Report, Returns or the other record available at the time of computation of tax.

(b) The reasons and basis for disallowance of claims, levy of taxes at higher rate and disallowance of set-off should be expressly stated in the assessment order and must be supported by the evidences and fair view.

6. **GUIDELINES FOR PASSING JUDICIOUS ASSESSMENT ORDERS:**

6.1. Where the dealer or his representative has not been appeared or no record has been produced, in such cases, the respective Assessing Officer shall take the administrative approval of the immediate supervisory authority while issuing the *ex-parte* best judgment detailed working show cause notice. Further, if *ex-parte* best judgment assessment order is required to be passed, administrative approval shall be obtained again before the order of assessment is made.

6.2. The officer of the rank of Deputy Commissioner should take the approval of the concerned Joint Commissioner, whereas the Sales Tax Officer(s) and Assistant Commissioner(s) should take the approval of the concerned Deputy Commissioner (ADM).

6.3. The assessing authority shall maintain a U.O.R. register (Unofficial Reference) and make an appropriate entry of the said dealer in the said register and submit the same for the approval of the immediate supervisory authority.

6.4. The immediate supervisory authority after following the due process stated hereinabove shall, give approval with suggestions or reject with proper reasoning the proposal so submitted within three working days and send back the said U.O.R to the concerned assessing authority.

6.5. The decision on the ex-parte assessment order by the immediate supervisory authority shall also be taken within three working days, ensuring that the assessing officer shall have sufficient time to do further process within the limitation period.

6.6. The approval sought as above would be administrative in nature and therefore would be limited to procedural aspects laid down in the Internal Circular(s) issued in this behalf and shall not in way be construed as approval to the merits of the issues involved in determination of tax liability including allowance of disallowance of set-off. On this backdrop the immediate superior authority shall ensure that the assessing authority,-

(a) has given proper and effective opportunity of hearing to the dealer and has followed principles of natural justice.

(b) has submitted the *ex-parte* Best Judgment Assessment proposal along with the draft working of the proposed tax computation.

(c) has issued proper show-cause notice bringing the facts and issues involved in the case to the notice of the dealer and has also provided enough time for this purpose.

7. Needless to state that the sanction as above by the immediate supervisory authority as above, shall not affect statutory powers for review or other such powers conferred upon it.

8. The immediate supervisory authority i.e. Joint Commissioner or, as the case may be, the Additional Commissioner shall take monthly review and inspection of this process to ensure that these instructions are followed in letter and spirit.

9. All the authorities are directed to follow above instructions scrupulously. Any deviation will be viewed seriously and appropriate actions will be initiated.

Rajiv

(RAJIV JALOTA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.

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Internal Circular No. 13 A of 2018.

(VILAS INDALKAR)
Additional Commissioner of Sales Tax,
(VAT)-02, Maharashtra State.

Copy forwarded to the Joint Commissioner of Sales Tax (Mahavikas) with a request to upload this Internal Circular on the Employee Corner of the Departments Web-site.

Copy submitted with compliments to,-

(a) The Deputy Secretary, Finance Department, Mantralaya, Mumbai-21 for information.

(b) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.