



No.VII-12-1-2016-Rev Sec-CCT 17265/CT

Dated 16-11-16

## C I R C U L A R

Sub: In the matter of tax audit and audit assessment of dealers u/s 41 & u/s 42 of OVAT Act – Applicability of the amended provisions

Section 41 and 42 of the OVAT Act, 2005 have been amended vide Notification No. 9848-I-Legis 5/2015-L dtd. 24.09.2015 which has come into effect from 01.10.2015 vide F.D. Notification No. 28080-FIN-CT1-TAX-0017-2013 dtd. 19.10.2015. Since the above-said amendment has come into effect from 01.10.2015, **doubts have arisen in some quarters as to whether the amended provisions are applicable to tax periods ending on or before 30.09.2015 or not.**

2. The cardinal principle of any taxation law is that the rate of tax or interest or penalty thereon cannot be different for different assessees for the same tax period. Otherwise, it will lead to discriminatory treatment of assessees for the same tax period. **Therefore, it is hereby clarified that the aforesaid amended provisions will be applicable only to tax periods starting on or after 01.10.2015. Prior tax periods, i.e. tax periods ending on or before 30.09.2015, will continue to be governed by the pre-amendment provisions of tax audit followed by audit assessment.** Hence, irrespective of date of initiation of audit proceeding and irrespective of date of finalization of audit proceeding, it is clarified that :-

- a. audit proceedings for tax periods ending on or before 30.09.2015 shall be governed by the pre-amendment provisions of section 41 & 42 of the Act which stipulate for conduct of tax audit, finalization of Audit Visit Report by audit officer, submission of AVR to the Assessing Authority for taking up audit assessment and imposition of penalty equal to twice the amount of tax assessed by the Assessing Authority.
- b. audit proceedings for tax periods starting on or after 01.10.2015 shall be governed by the amended provisions of the Act.

3. In the light of the clarification given above and in partial modification of the Letter No. 4679/CT dtd. 17.3.2016 of the CCT (Odisha) on the subject "Tax Audit of Dealers for the year 2016-17" and Circular No. 9122/CT dtd. 04.06.2016 of the CCT (Odisha) on the subject "In the matter of imposition of penalty under section 42 and 43 of Odisha VAT Act", **the following instructions are hereby issued for immediate necessary action at your end.**
- a. The period of audit of the selected dealers shall be limited to the tax period from April 2014 to September 2015, instead of April 2014 to March, 2016.
  - b. If any audit team, after finalizing the AVR, has already, by mistake, issued notice to the dealer alongwith the AVR asking the dealer to pay the tax and penalty @ 25% of tax and if the dealer has not yet paid the tax & penalty as per the notice, a letter be immediately sent by the audit officer to the dealer withdrawing the notice issued. The audit officer will, thereafter, basing on the available records and documents, re-finalise the AVR limiting the audit period from April, 2014 to September, 2015 and submit the revised AVR to the Assessing Authority for taking up audit assessment u/s 42 of the pre-amended provision of the Act.
  - c. If, in response to the notice of the audit officer mentioned above, the dealer has already paid the tax amount along with penalty @ 25% thereon, the audit officer will re-finalise the AVR, basing on available records and documents, by limiting the audit period from April, 2014 to September, 2015 and submit the revised AVR to the Assessing Authority for audit assessment u/s 42 of the pre-amended provision of the Act. The payment already made by the dealer shall be adjusted against the liability of the dealer or refunded depending on the result of audit assessment. This should be intimated to the dealer by the Assessing Authority at the time of issuing notice for audit assessment.
  - d. In case where the audit officer has already submitted the AVR to the Assessing Authority for audit assessment covering the audit period from April, 2014 to March, 2016, the Assessing Authority will return the AVR to the audit officer for recasting. The audit officer will recast the AVR, basing on available records and documents, limiting the audit period from April, 2014 to September, 2015 and submit the revised AVR to the Assessing Authority



afresh for undertaking audit assessment as per section 42 of the pre-amended provision of the Act.

4. In case of audit undertaken during 2015-16, for the tax period 2013-14 and 2014-15,
  - a. where cases have already been settled erroneously by the Audit Officer as per the amended provisions, such cases shall be taken up for audit assessment by the Assessing Authority as per the pre-amended provision of Section 42 of the OVAT Act. Payment already made by the dealer as per the notice of the Audit Officer shall either be adjusted against the liability of the dealer or be refunded to him depending on the result of audit assessment. This should be intimated to the dealer by the Assessing Authority at the time of issuing notice for audit assessment.
  - b. where audit assessment for the year 2013-14 and 2014-15 has been completed and penalty equal to the amount of tax assessed has been imposed erroneously as per the amended provisions of Section 42, the Assessing Authority shall rectify (u/s 81 of the OVAT Act) the assessment order by imposing penalty equal to twice the amount of tax assessed as per the pre-amended provisions of Section 42 of the OVAT Act as already clarified by Circular No. 9122/CT dtd. 04.06.2016 of the CCT (Odisha) and issue fresh notice of demand accordingly. Before rectification of the assessment order, the dealer should be given an opportunity of being heard as provided u/s 81 of the Act.



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