

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, ODISHA, CUTTACK

No. 12410 /CT
Rev-32/3/2016-Rev-ECT
To

Dt: 8/8 /2016

**JCCTs in charge of Ranges
DCCTs/ACCTs in charge of Circles**

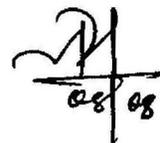
Sub: In the matter of refund of excess tax paid by way of TDS by works contractors

Madam / Sir,

As you are aware, OVAT Act has been recently amended and a special provision has been made in Section 57(2) (a) for refund of excess tax deducted at source. The detailed procedure for sanction of such refund is prescribed in Rule 66-A of the amended OVAT Rules. As per the prescribed procedure in the said rule, on receipt of application electronically, the assessing authority shall refer the case for audit under sub-section (2) of section 41 to determine the admissibility of the claim of refund and the claim of refund shall be subject to result of such audit.

By now Works Contractors might have started applying for refund of excess tax paid by way of TDS under the amended provision. The following procedure shall henceforth be adopted for disposal of refund applications filed by works contractors.

- (a) The refund applied for should relate to a period not beyond 16 months (i.e. 12 months + 4 months as per the provisions of the Rule 66-A) from the date of application. Thus, those dealers who have carried forward the excess tax paid by way of TDS of previous tax periods to a tax period falling within 16 months from



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the date of application and are filing return regularly can apply for refund under the aforesaid provisions of the Act.

(b) Preliminary checking of the application has to be made by the assessing authority with respect to the return filed for the tax period to which the refund claim relates.

- i. It may be specifically seen and ascertained whether excess payment was reported in Sl. 56 (vii) (g) of the VAT return.
- ii. It has to be ascertained as to whether the amount claimed as refund has been reduced from the balance amount carried forward in the Return last filed.

If the above are not complied by the dealer, the application for refund of excess tax by way of TDS shall be rejected. Before rejection of the claim of refund, the dealer must be given a reasonable opportunity of being heard.

(c) If the refund application is found to be in order, it has to be referred to an Audit Team within 7 days of receipt of the application.

(It is to be mentioned here that Deputy Commissioners or Assistant Commissioner of Commercial Taxes in charge of Circles have in the meantime been delegated with the power of constituting Audit Team and assignment of such refund cases to audit, vide this office letter No VII-12/1/2016-REV-3939/ CT Dt. 08.03.2016.)



Compendium of Circulars

(d) Audit of such cases should normally be completed within 60 days from the date the case was referred to Audit. During Audit, in addition to other matters, the following matters should be examined.

- i. TDS certificate and the references made in the TDS certificate(s) irrespective of the tax period(s).
- ii. Whether gross payment made as per TDS certificate(s) were incorporated in periodical return filed.
- iii. Whether any assessment(s) was made earlier and refund sanctioned. If so, if any of the TDS certificate now being considered was considered earlier for assessment or for any other proceeding against which the said refund was sanctioned.
- iv. Whether the amount deducted in the related TDS certificate has been actually credited to the Government exchequer.

(e) The Audit report should be submitted to the Assessing Authority within 30 days of completion of Audit.

(f) The Audit report may give rise to any of the following situations:

i. The entire amount claimed as refund may be recommended by the Audit. In such case, refund shall be sanctioned within 30 days from the date of receipt of the Audit report.

ii. The amount allowed by Audit as refundable is lesser than the amount claimed as refund by the applicant. In such case, the amount allowed by audit as refundable shall be refunded by the Assessing Authority within 30 days from the date of receipt of the audit report. In respect of the balance refund claim amount (which has



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been disallowed by the Audit), the Assessing Authority, after giving the applicant reasonable opportunity of being heard, can pass appropriate order either to disallow it or allow it fully/partly. In case of the balance refund claim being allowed fully/ partly by the Assessing Authority, the refund shall be granted by him within 30 days from the date of passing of his order.

iii. Audit may recommend for further assessment and in that case, the Assessing Authority shall initiate assessment proceedings u/s 43 of the OVAT Act on the basis of such audit report.

Yours faithfully



**Commissioner of Commercial Taxes
Odisha, Cuttack**