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No. 10970 /CT
To Rev-32/3/2016-Rev-CCT

Dated: 02-07-16

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

Sub: Disposal of Refund Applications ---- Regarding

Ref: This office Letter No. 2211/CT Dated 18.02.2014

Madam / Sir,

Instructions had been issued earlier by the Commissioner of Commercial Taxes vide this office letter referred above specifying the modalities to be adopted for timely disposal of disposal of refund applications. It is believed that these instructions are being meticulously followed by you while disposing refund applications. Now, in continuation of these instructions, it is further directed as follows:

(1) **Proposals for Withholding Refund:**

- (a) The Commissioner has been conferred with the power of invoking Section 60 of the OVAT Act to withhold refund only on the following grounds.
- (i) Where any order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and
 - (ii) The Commissioner is of the opinion that the grant of such refund is likely to adversely affect the revenue, and
 - (iii) That it may not be possible to recover the amount later.
- (b) As clarified by the Hon'ble High Court of Orissa, vide its order Dt. 26.09.2014 in WP(C) No 13723 / 2014 in the case of M/s Unit Construction Company Vs Commissioner of Commercial Taxes and others, **simultaneous fulfillment of all the above-mentioned three conditions is the pre-requisite for withholding of refund arising from an order.** Thus, you are required to submit proposal for withholding of refund only when all the three conditions are fulfilled simultaneously. Needless to say that in case where the three

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conditions are not fulfilled simultaneously, you have to issue refund within the timeline prescribed under the Act.

- (c) All refund withholding proposals shall henceforth be submitted in the prescribed format enclosed herewith. The DCCT/ACCT concerned shall submit the proposal in the prescribed format to the Range JCCT within two weeks from the date the refund falls due. The Range JCCT, after making due diligence, may agree to the proposal and send it to the undersigned with his comments within two weeks. On the other hand, in case the Range JCCT does not agree to the proposal, he will return it to the DCCT/ACCT concerned with his comments within two weeks, with a copy marked to the undersigned.
- (2) **Refund Sanctioning Authority:** Sometimes officers of Range Offices perform the role of Assessing Authorities in respect of some dealers. **It is hereby clarified that irrespective of who is the Assessing Authority, refund will be processed in the Circle Office.** In such cases, a copy of the Assessment Order must be sent to concerned Circle Office immediately on completion of assessment proceedings and on receipt of the Assessment Order, refund shall be processed by the concerned Circle Office as per law.
- (3) **Interest Calculation--- Period under Sub-Judice:** You are expected to process refund cases within the prescribed time limit so that the State Government does not have to pay interest on the refund amount for delay in making the refund. However, in the unlikely event of delay, interest is to be calculated for the entire period of delay. **It is hereby clarified that while calculating interest for the delayed period, the sub-judice period (i.e. the time taken by the Appellate / Revisional Authorities and / or Hon'ble High Court/ Supreme Court for adjudicating the matter) shall not be excluded from calculation of interest unless specifically mentioned in the final adjudication order.**

These instructions must be followed scrupulously. This Office will henceforth review status of all refund cases on a regular basis and erring officials will be taken to task appropriately.

Yours faithfully



Commissioner of Commercial Taxes
Odisha, Cuttack

Proposal for Withholding of Refund U/s 60 of the OVAT Act

Part-A

(To be filled in by Concerned STO / ACST / DCST)

1. Name and address of the Dealer and R.C. Number
2. Date of receipt of the order giving rise to refund
3. Date of filing of the refund application (if applicable)
4. Whether the order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending. (If yes, please state the Order Number, Date & Authority)
5. Whether the grant of such refund is likely to adversely affect the revenue (If yes, please state specific reason(s))
6. Whether it may not be possible to recover the amount later (If yes, please give justification)
7. State specifically whether the conditions mentioned in Sl. No. 4, 5& 6 above are being fulfilled simultaneously in this instant case.
8. Are you recommending for withholding of refund?

Date:

(Signature of STO / ACST /DCST)

Name:

Part-B

(To be filled in by Concerned JCST)

Certified that the proposal for withholding of refund received from the concerned STO/ ACST/ DCST has been scrutinized by me. I recommend/ do not recommend (strike out which one is not applicable) withholding of refund for the following reasons.

Date:

(Signature of JCST)

Name: