

**OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES:
ODISHA, CUTTACK**

NO. 25266 / CT
1(XLVI)06/2013

Dated : 27-12-13

To

Joint Commissioners of Commercial Taxes in Charge of Ranges/
Deputy Commissioners of Commercial Taxes /
Asst. Commissioners of Commercial Taxes in charge of Circles.

Sub: Production of Lower Court Records before the Hon'ble O.S.T.T.

CIRCULAR

The Hon'ble Orissa Sales Tax Tribunal have expressed their vexation over non-production of lower Court records by Revenue authorities, particularly when the state is the appellant. Even in cases where the dealer is the appellant, whenever called for, the State will have to produce records or otherwise, the submission made by the dealer, even though erroneous, would be considered by the Hon'ble Orissa Sales Tax Tribunal. Thus, non production of records by Revenue may result in the state losing the case solely on this ground.

Orissa Sales Tax Tribunal is the final fact finding authority and a fact recorded by the tribunal is required to be borne out of records. For lack of production of records, the Hon'ble Orissa Sales Tax Tribunal have been dismissing a number of cases everyday and in the process, the interest of revenue is at stake.

Taking cognisance of the above fact, a circular bearing No.22929/CT, and dt.30/11/2009 was issued in terms of the directions of the Hon'ble Orissa High Court, in case of Geetanjali Cement Products Vrs. STO, (2010) 36 VST 380 (Ori), to maintain records diligently. However, it is observed that the same is not being adhered to.

Compendium of Circulars

The Hon'ble Orissa Sales Tax Tribunal while disposing the 2nd appeal have also adversely commented on the manner of response and record keeping on the part of Revenue. Due to an unprofessional approach in submission of records from the lower fora, the State is being forced to cut a very sorry figure before the Hon'ble Orissa Sales Tax Tribunal.

So far as, record keeping is concerned, the following defects are noticed:-

- Records are not paginated duly,
- Year of assessment/appeal is not recorded properly,
- Orders sheet are not maintained,
- Orders are not signed,
- Letter calling for lower court records is being sent to wrong authority.

It is, therefore, directed that, --

1. Letters would be issued by the State Representatives/ Deputy State Representative to the concerned circle officers and the JCCTs in charge of ranges to produce records. The JCCTs will be primarily responsible for monitoring & ensuring that all such records are submitted in time. The reminders will have a red corner signifying urgency and thereafter, the matter will be referred to the CCT (O) for the needful. The compliance by the circle officer should not take more than a month.
2. It should be noted that, if Hon'ble Orissa Sales Tax Tribunal dismisses a State appeal for want of records for which initial and red corner notices have been issued earlier, the concerned officers will be held liable for consequential revenue loss and due proceedings shall be initiated for the said loss.
3. The first appellate authorities are required to refer to the assessment records while disposing of the appeals. They are required to call for the relevant assessment records as soon as the appeals are filed.

Compendium of Circulars

4. Whenever an appeal order is sent to the State Representatives for scrutiny, records relating to the appeal as well as the assessment are required to be sent along with. This will help the State Representatives to prepare proper grounds of appeal. In the event, the learned State Representative opines not to prefer second appeal, the records will be retained for a reasonable period say at least for ninety days, because in the event the Registry of Tribunal issues notice inviting cross objection, in absence of proper records of authorities below, it may not be possible to take a firm stand by the State.

5. The Section Officer of State Representatives is required to identify analogous cases, for example, appeals of a particular dealer relating to different periods and different statutes. Further, it is also necessary to tag up both the dealer's appeal as well as the State's appeal. If necessary information relating to same dealer for different periods, and cross-appeals/cross-objections is made available to Addl. CCT-cum-State Representatives / DCCT (Appeals) / DSR, it would be easier for placing proper material before the Hon'ble Sales Tax Tribunal at the time of hearing. This would help in preparation of cases for hearing.

This will take immediate effect.


Commissioner of Commercial Taxes
Odisha, Cuttack