

Compendium of Circulars

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, OOISHA, CUTTACK

No. III (I) 38/2009 15356/CT.,

Dt. 09/10/2013

CIRCULAR

To,

The Deputy Commissioner of Commercial Taxes /
Assistant Commissioner of Commercial Taxes in-charge of Circles,

Sub: Procedure to be followed in case of amendment of Certificate of Registration under OVAT Act in case of change involving alteration of basic status of a dealer as provided under sub-section(6) of Section 32 of the OVAT Act, 2004 - Instructions Regarding.

It has come to the notice of the undersigned that quite often the Registering Authorities i.e., DCCT/ACCT of different Circles are insisting on sale of stock-in-trade at the time of disposal of amendment application in form VAT-108 involving change of basic status of a dealer, such as conversion of a proprietorship concern to a partnership firm or vice versa, dissolution of an existing firm and creation of a new firm, formation of a firm into a company or vice versa. Such approach of the registering authority at the time of amendment is causing discontentment among the trading community. There may be occasion of sale of business and on such occasion, there is provision at column 04 of final return in form VAT-202 to exhibit the value at which the business has been sold. However, mechanically insisting on sale of business at the time of disposal of amendment application without its actual sale is not a desirable practice.

The existing procedure in respect of amendment involving change of basic status of a dealer is governed under sub section(6) of Section 32 of the OVAT Act read with sub-rule(4) & (5) of Rule 30 of the OVAT Rules. As per sub-section(6) of Section 32 of the OVAT Act, where any change altering basic status of a dealer as stated above happens, a new Certificate of Registration shall be issued on application being filed in this behalf in the manner prescribed under sub-rule(4)&(5) of Rule 30 of the OVAT Rules. The manner prescribed under sub-rule (4) & (5) of Rule 30 of the OVAT Rules is that on occurrence of the event involving alteration of basic status of a dealer, the fact of occurrence shall be informed by the dealer in writing within 15 days of such occurrence to the registering authority stating the date of such change along with production of evidences in support of such change. The registering authority shall on receipt of such intimation and after due enquiry shall cancel the Certificate of Registration with effect from the specified date and issue a new Certificate of Registration basing on application filed by the dealer by following the manner prescribed under Rule 15 of the OVAT Rules.

Cases are arising, where the existing business seeking amendment will have stock-in-trade and ITC. Such issues are to be regulated in the following manner;

(1) Stock-in-Trade of the existing legal entity

Sub-rule (10) of Rule 34 of the OVAT Rules, prescribes furnishing of final return due to closure of business or for cancellation of certificate of registration. Sub rule (4) and (5) of Rule 30 of OVAT Rules prescribes that in the event of any change altering the basic status of a dealer,

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certificate of registration shall be cancelled and a new certificate of registration shall be issued. Hence in the event of cancellation of certificate of registration the dealer is required to furnish a return in VAT 202. The dealer seeking amendment under sub-section(6) of Section 32 of the OVAT Act shall disclose the closing stock at **column 05** of the said form VAT-202 along with a statement separately showing the details of closing stock. In the said closing stock statement, the dealer has to furnish product/item- wise quantity in stock, unit price, amount of purchase, VAT paid on purchase, total value etc. The registering authority shall cause an enquiry as to the genuineness of the declaration made in **column 05** by way of field enquiry. After due enquiry, if it is found that the closing stock declared at the time of closure of business is genuine and the stock is physically existing at the place of business/ additional place of business/ godown, the new legal entity consequent upon amendment shall take over the stock. It will be the opening stock for the new legal entity.

(2) INPUT TAX CREDIT

When VAT suffered stock is carried over to the new legal entity, ultimately, the ITC on such stock gets carried over to the new legal entity. The new legal entity at the time of filing of return in form VAT-201 will disclose the ITC at **column 05** of Part-A of form VAT-201. The said ITC is subject to utilization against output tax generated on sale of goods by the new legal entity.

(3) RECOMMENDATION FOR AUDIT

Where registration certificate of a dealer is cancelled due to change in ownership/status of a business, to ensure proper tax compliance of that dealer against the cancelled TIN, the tax audit in respect of such individual dealers, where ITC gets carried to the new legal entity shall be conducted on out of turn basis (even if more than once in an audit cycle) within three months from date of cancellation of the registration certificate after due approval from the Commissioner.

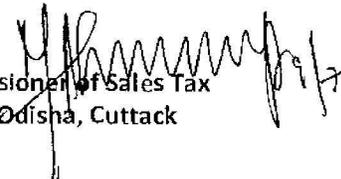
(4) AFFIDAVIT TO TAKE OVER LIABILITIES

The dealer/person making application for change of ownership/status of a business shall furnish an affidavit declaring to pay tax including any interest & penalty due from the previous dealer up to the date of such transfer/change irrespective of such tax including any interest & penalty has been determined before or after such transfer and such affidavit shall be enclosed to the application for change of ownership/status of a business. (An affidavit form is enclosed.)

(5) HISTORY SHEET

Where the certificate of registration is cancelled consequent upon change in ownership/status of a business, a history sheet reflecting all such changes is to be made available in the designated portal, so that individual cases can be tracked in future, if required.

It may be borne in mind that in such cases of change of ownership/status of a business involving taking over of assets and liabilities, it will be treated as cases of continuation of existing liability to pay tax and the new legal entity shall be liable to pay tax w.e.f. the effective date of taking over of the assets and liabilities.


Commissioner of Sales Tax
Odisha, Cuttack

