

Bangalore Chamber of Industry and Commerce

No.1A, Bharat Apartments, 44/1, Fairfield Layout, Race Course Road, Bangalore - 560 001
Tel: 22286080 – 82; Fax: 22251475; e-mail: bcic@bcic.org.in ; website: www.bcic.org.in

SHEKAR VISWANATHAN

President

10th February, 2011

The Commissioner of Commercial Taxes
Karnataka, VTK I, I Floor
Gandhinagar
Bangalore 560 001

Dear Sir,

Sub: Difficulties faced by trade and industry in respect of recent notification dated 25.01.2011 relating to uploading of data / particulars for movement of goods

Ref: Our memorandum dated 30th January 2011

With reference to the above subject Bangalore Chamber of Industry and Commerce (BCIC) on behalf of the trade and industry would like to submit its views which are as under :-

I. Preamble

The Department of Commercial Taxes had originally issued a notification vide No. Adcom (I&C) /AC/ CR.22 /2010-11, dated 19.01.2011 under section 53 of the KVAT Act, 2003 in supersession of notification vide No. Adcom (I&C) /AC/ CR.22 /10-11, 24.05.2010. A new notification vide No. Adcom (I&C) /AC/ CR.22 /2010-11, dated 25.01.2011 came to be issued in supersession of the said notification No. Adcom (I&C) /AC/ CR.22 /2010-11, dated 19.01.2011. The said notification vide No. Adcom (I&C) /AC/ CR.22 /2010-11, dated 25.01.2011 is effective from 01.02.2010 and it relates to issue / usage of delivery challans (i.e., Form VAT 505 and Form VAT 515) for movement of goods along with updating such details in the notified website (commonly known as e-SUGAM Form).

At the outset we appreciate the clarification issued by the Honourable Commissioner of Commercial Taxes, Karnataka, Bangalore vide circular no. 18/2010-11 dated 31.01.2011 to observe the month of February 2011 as "Observance Month" to educate / persuade the dealers to comply with the notification.

II. Issues arising out of the prevailing law

1. Section (2-A) of the KVAT Act, 2003 reads as follows:-

"(2-A) Notwithstanding anything contained in clause (c) of sub-section (2), the owner or person in charge of the goods vehicle carrying goods of any specified class of goods or any specified class of dealers or as a result of any specified class of transactions as may be notified by the Commissioner:-

- (a) Shall report at the first check post or barrier situated on the route ordinarily taken from the place in the State, from which the movement of goods commences, to its destination; and*
- (b) Shall produce proof of entering in the website, particulars of the goods carried by the consignor or consignee of the goods as may be specified in the notification, before the officer specified in sub-section (2); and*
- (c) On such production, the officer may allow the goods vehicle to pass through.*

2. On a reading of the language employed in clause (a) of the aforesaid provisions of law, it is apparent that only in respect of physical movement of goods commencing from any place in the State of Karnataka, the Commissioner is conferred with powers to notify the requirement of entering of data regarding goods by the consignor or consignee. Consequently, in exercise of the powers conferred by the said provisions of law the Commissioner cannot notify the requirement of the consignee dealer of Karnataka to up load/enter he data regarding the goods received from outside the State of Karnataka into the State of Karnataka. Hence, the Part C" of the aforesaid notification are without authority of law. Furthermore, since the said requirement creates a barrier for smooth flow of trade between the States, the same are ultra vires Article 301 of the Constitution of India.
3. The requirement that the data regarding the goods should be entered into in the website before the goods vehicle carrying the goods enter s into the State of Karnataka is not only illegal but impractical. It is settled law that till the physical delivery is taken in a State which is a State other than the State from where the inter State movement of goods commences, the movement of goods in the course of inter-State trade is not complete. Furthermore, where such movement/receipt of goods is in pursuance of inter-State purchase the sale would be complete only after the physical delivery of goods is taken delivery by the consignee. In such cases till such time the physical delivery of goods is not taken the transaction of sale is not complete. Hence, the instructions to the effect that consignee dealers of Karnataka should enter the data regarding the movement of goods from outside the State before the goods vehicle enters the State of Karnataka is illegal and impractical.
4. It is common business practice all over India that the purchase bill/invoices/delivery notes in respect of the goods coming to the State of Karnataka from the other States are received before the physical delivery of goods is taken or the movement of goods commences from the other States but only at the time of physical delivery of goods. Hence, the requirement that the data regarding the movement of goods into the State before the goods vehicle carrying the goods enters the State is impractical and it would lead to great difficulty for trade and industry.
5. The Chamber appreciates the move of the Commercial Tax Department for expeditious clearance of goods at the check posts and capturing of the data electronically which will certainly curb evasion and avoidance of taxes. It will not be out of place to highlight certain practical difficulties faced by the trade and industry if the said notification comes into operation which are as follows:
 - a. If the notification is made mandatory then it is the concern of trade and industry that it will increase man power costs and would be regressive to trade and industry;
 - b. The most difficult part would be the date on which the relevant / notified goods enter the State when they are received or procured from outside the State and keying in the data in the official website; It is stressed that the buyer in the State would have no control over the movement of goods and the date on which they enter the State border prior to which the data has to be entered into the official website; In fact, bonafide dealers in whose cases there could be genuine omissions would be exposed to penal provisions since after dispatch of goods the vendors will have no concern / control over the goods in transit;
 - c. The maximum time limit of 7 days granted for receipt of goods exceeding the specified distances is insufficient, more specifically in case of goods imported from outside the country since there can be inordinate / inexplicable delays at the time of clearing or receipt of goods;
 - d. The value specified for receipts (non sale) / purchases & import movement of goods from outside state upto a limit of Rs 5,00,000/- is exempt from data entry as in the present day scenario it appears a time consuming exercise to key in data relating to such small values;"

- e. Most of the industries have separate divisions which take care of procurements / job work / repair and are physically at different locations and hence for smooth running of day to day transactions the authorisation for data entry in Department website needs to be given to different people responsible for the such functions and sharing of single pass words across the company will be risky and will lead to possible misuse of the login ID and it will also be difficult to trace user of the ID who is responsible for the transaction. It is suggested that large assesseees are given multiple login ID with separate passwords";
- f. Most of the large and medium scale industries follow the method of just in time receipt of stocks to optimise costs. If the notification is made mandatory then the industry will be faced with time and resource constraints to upload the data / particulars in the authorised website which could lead to undue hardship to clear the goods at the check posts. The very same fact will also lead to stoppage / disturbance in the continuous production processes which is the method followed by many industries;
- g. Once the purchase orders are released by the industry it is the prerogative of the vendor to dispatch goods at any time convenient to them; It implies that the industry based in Karnataka is required to constantly monitor the movement of such goods and upload the data / particulars accurately in the notified website which is an enormous task for which the industries are yet to gear up; Any minor error in uploading data / details could vitiate the entire transaction as invalid which amounts to undue hardship caused to such industries.

Suggestions

- 1. The members of the trade and industry suggest that the notification is not cost effective, entails deployment of additional manpower and as such regressive in nature. Therefore, it is suggested that the notification be withdrawn.**
- 2. Assuming but not admitting that the said notification is made mandatory then it could be implemented if the dealers are permitted to upload the data at the time of filing of returns which appears more practical.**
- 3. The threshold limit may be extended upto Rs. 5,00,000/- instead of Rs. 20,000/-; Further, the time limit specified in respect of validity of e-SUGAM be extended to 30 days.**
- 4. The dealer must be provided with multiple user login ID and password.**
- 5. It is also relevant here to submit that the physical movement of goods would be covered by the documents specified in Section 53(2) of the Karnataka VAT Act, 2003 and Rule 157(1) of the Rules made there under. Consequently, there would be full and complete compliance and the object of establishing the Check Posts, which is to prevent the evasion of tax, would be achieved. Therefore, it is suggested that the notification be withdrawn.**

For Bangalore Chamber of Industry and Commerce



SHEKAR VISWANATHAN