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Dr. Vinod Nowal
President, BCIC

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Mr. Pradeep Singh Kharola, IAS
Commissioner of Commercial Taxes
Karnataka, VTK I, 1st Floor
Gandhinagar
Bangalore 560 001

Dear Sir,

Sub: Procedural and Administrative Issues on VAT/KVAT faced by Industry and Trade

With reference to the above subject, Bangalore Chamber of Industry and Commerce (BCIC) on behalf of the Trade and Industry wishes to submit the following for your kind consideration:-

Issue 1 – Requirement of pre-deposit of 50% of tax and other amounts

a. Position of law

In terms of the provisions of section 62 of the KVAT Act, 2003, a dealer seeking stay of recovery of disputed taxes and other amounts is required to deposit 50% of tax and other amounts at the time of filing the appeal in which case, the first appellate authority may stay the recovery of the balance 50% of tax and other amounts, subject to the dealer providing security to the satisfaction of the departmental authorities. In terms of section 63 of the KVAT Act, 2003 there is a requirement of pre-deposit of 50% of the tax and other amounts as pre-condition for admitting an appeal by the Hon'ble Karnataka Appellate Tribunal.

b. Issue

The Trade and Industry believes that payment of 50% of tax and other amounts either for seeking stay or for getting the appeal admitted is an extremely onerous condition. There are a few States in India where such a mandatory condition is not traceable to the provisions of law and the appellate authorities are vested with adequate powers to administer the provision of law while considering the application for staying the recovery of taxes or for admission of appeals. In certain other States, the quantum of mandatory payments of taxes and other amounts is as low as 10%. There are a number of circumstances in which such requirements can be dispensed with. It is also a huge burden on the tax payer to make pre-deposit of taxes to pursue a legal remedy. In this backdrop, the following suggestions are requested to be considered:

c. Recommendation

i. In case of dealers preferring appeals before the first appellate authority and seeking stay of recovery of tax and other amounts, the pre-deposit of cash could be restricted to 10% and the balance to be covered by appropriate security.

ii. In case of dealers preferring appeals before the Karnataka Appellate Tribunal and seeking stay of recovery of tax and other amounts, the pre-deposit of cash could be restricted to 50% and the balance to be covered by appropriate security.

iii. In cases of dealers preferring appeals whose issues are covered by judgments of the Supreme Court or our own High Court or by the Karnataka Appellate Tribunal, no pre-deposit of taxes and other amounts must be insisted upon.

iv. Recovery of taxes and other amounts must not be resorted until the expiry of the due date of filing an appeal before the appropriate authority. Section 42 of the KVAT Act, 2003 may suitably be amended in this regard.

Issue 2 - Inspections / Audits / Assessments / Re-assessments

a. Preamble

After introduction of VAT, most of the dealers are subject to repeated inspections / audits / assessments / re-assessments etc., by Officers of audit wing, inspection wing, enforcement wing, assessing authority, intelligence wing etc. In most of the cases the same issues are looked into and many of the departmental authorities commence inspection, not knowing that the unit / dealer have already been inspected. It is nothing but duplication of work putting the dealers to a lot of hardship and also significantly enhancing the cost of compliance.

b. Recommendation

A dealer should be subject to audit not more than once in a year by a single authority and not by all the authorities. The VAT law should clearly empower any one authority who can visit the premises of the dealer to conduct an audit / assessment / re-assessment. Duplication must be avoided except in circumstances where the department envisages fraud or evasion of taxes.

Issue 3 – Input tax credit

a. Issues faced by the dealers with regard to the time of availment of Input VAT credit

i. An issue has been constantly raised by the Authorities with regard to timing of availment of input VAT credit by various dealers in Karnataka;

ii. In this regard, we wish to bring to your kind attention that Section 10 of the Karnataka Value Added Tax Act, 2003 ("Act") prescribes the methodology to be adopted for claiming the credit of input tax paid by the assessee against the purchases made so as to set off its liability against the tax collected on sales made by a registered dealer;

iii. As per Section 10(4) of the Act, for the purpose of calculating the amount of net tax to be paid or refunded, no deduction of input tax shall be made unless a tax invoice, debit note or a credit note, in relation to a sale, has been issued and is with the registered dealer taking the deduction at the time of any return in respect of the sale;

b. Submissions

i. With regard to the purchase of goods in respect of which VAT input credit is availed, in some cases, the purchase invoices are accounted in the months subsequent to the month in which they are raised;

ii. For e.g., if the purchase is made in the April 2010, such purchases are accounted in the books of accounts in May 2010 or June 2010, due to the reasons specified below. Consequently, the purchases are also reflected in the VAT returns in which the purchases have been accounted and input VAT credit is claimed accordingly.

iii. The purchases (pertaining to such invoices) are disclosed in the returns in the month in which the purchases are accounted. In other words, the VAT returns are prepared on the basis of the actual purchases accounted in the books of accounts (and not as per the date of invoice). The above process also ensures appropriate checks are done internally before the input VAT credit is claimed.

iv. Further, we also rely on the following clarification contained in the VAT Communication Campaign Release No 8:

Clarification vide VAT Communication Campaign Release No 8

- ✓ The VAT Communication Campaign Release No 8 was issued by the Commercial Taxes Department on introduction of VAT regime, providing clarity to the dealers for 'Completion the VAT returns. The said communication provides guidance on the values to be filled in each of the boxes of the Form VAT 100 return.

- ✓ In this regard, with respect to disclosure of purchase in the monthly VAT returns, it states as follows:

*"Box 10 – Enter the net value of purchases as per your purchase invoices in the period of the **return** at the rate of 4% tax of goods for use in your business. If these purchases include any of the items covered in 5 schedule, the value of such purchases should be excluded. If you have not made any purchases at this rate of tax enter "nil" or "0"."*

- ✓ The said comment makes reference to Note 2 which reads as follows:

  It is normal to reclaim input VAT on purchases in the period in which the purchase was made. ***However it may not always be possible to do so, for instance where the supplier has not provided you with a tax invoice before you close your accounting period or where you have misplaced an invoice. In such circumstances the input tax amount should be claimed in the period first available after satisfactory evidence is available to you****.*

v. Thus, the above communication issued by the Commercial Tax Department specifically recognizes that there could be delay in accounting of invoices due to business processes. Accounting records are maintained to commercial requirements and it is on the basis that the dealer would continue to carry on business i.e. the going concern concept. Such a practice is in line with the feature of VAT law as a value added tax, wherein input tax can be claimed as a set-off in one month or any subsequent month. Accordingly, it acknowledges the fact that there may be occasions where the dealer may not be able to take input VAT in the month to which such purchases pertain to and in such a scenario, the dealer is eligible / entitled to claim VAT credit of the same in the subsequent period (first available for claiming the credit).

vi. It may be noted that despite the Campaign Release (as mentioned above), the adjudicating authorities/ ground level authorities have not taken cognizance of the same and are taking a contrary view.

c. Recommendations

i. In view of the above, we request you to kindly issue a clarification/ circular that the process adopted by the Dealers in such a scenario, for reflecting purchases in the VAT returns is fine. Additionally, the input VAT credit claimed by the Dealers is in accordance with the purchases reflected in the books of accounts and the VAT returns are in order.

ii. A specific instruction be issued to the field officers to follow the intent of law in its right spirit and no input tax be reversed on these transactions.

Issue 4 - Administrative issues

There are number of administrative issues which need to be streamlined. The following among others are some areas that need immediate attention:

i. Repeated visits by the intelligence / cross verification / inspection / audit / assessment wings must be avoided to avoid undue hardship to the dealers. Suitable guidelines to be framed and data made available departmentally to all Officers so that duplication of visits are avoided.

ii. An audit checklist to be evolved and made available to the dealers, which will enable the dealers to keep the data ready during the visit of the departmental authorities.

iii. In many instances penal provisions are invoked as a matter of routine. Under the KVAT Act, 2003 the penalties are harsh and as such, these provisions need a thorough re-look / revamp / reframing.

Notifications, amendments to law etc., must be carried out on specific dates say end of every month or quarter. If this routine is followed it becomes easier for the dealers to keep a tab of the changes / consequential amendments etc. Presently, the notifications / amendments to law etc. are carried out as and when the department chooses carry out such changes. Since there is no advertisement / publicity etc., it becomes extremely difficult for dealers to follow / implement the changes.

Issue 5 - Industrial Canteens

a. Preamble

Canteens are run by various industrial and other establishments who are dealers under the KVAT laws. Of late, there have been a spate of inspection conducted by the departmental authorities levying taxes on industrial canteens run as an amenity or welfare measure for its employees.

b. Recommendation

Since these are welfare measure for the employees of the industrial or other establishments, the question of levy of tax does not arise. In this backdrop, the following transactions must be exempted:

i. Articles of food and drinks sold, supplied or distributed –

   a. By canteens which are run on a 'no profit' basis in factories and other industrial concerns as an amenity provided for the employees of such factories or concerns;

b. By canteens run on a 'no profit' basis departmentally or through employees' co-operatives or by autonomous or statutory bodies established by Central Government or any State Government as an amenity for the members of their staff;
c. By canteens run on a 'no profit' basis in the premises of hospitals;
d. By canteens or hostels run by educational institutions and charitable institutions when such articles are sold, supplied or distributed exclusively to members of the institution concerned.
e. When a nominal deduction is made from a salary of the staff of any establishments as a welfare measure.

Conclusion

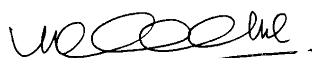
Suitable amendments / issue of clarifications as suggested above alone will usher in a strong and vibrant industrial atmosphere. Better tax adherence and compliance would emerge from a tax regime that is transparent, simple and broad based. In the result, if this is not done one can only visualize chaos.

The most important factor that can play a role in generating buoyancy in revenue to the State is when the Department eschews technicalities and encourages an approach of substantive compliances. The Government needs to appreciate the fact that the dealers intend discharging their tax obligations diligently. Given that a very large percentage of generation of revenue is on account of dealers' voluntary compliance, the efficacy of self assessment of dealers should be evaluated only in rare cases. Thus, a system should be created wherein a dealer is accepted at face value to meet his tax obligations and the procedures should be simple and hassle free. This will encourage higher compliance and encourage the dealer to have a positive attitude to discharge his tax obligations. If these objectives are met, it will be a win-win situation for both the Government and the dealer.

We request you to kindly consider our recommendations and look forward to hearing your positive response.

Thanking you and oblige,

With kind regards,



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