



## Bangalore Chamber of Industry and Commerce

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25<sup>th</sup> November 2011

Mr. Pradeep Singh Kharola, IAS  
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 e-SUGAM notification dated 03.11.2011 relating to uploading of data / particulars for movement of goods
- Ref: Notification No. ADCOM(I & C)/P.A/CR-31/2011-12 dated 03.11.2011 effective from 01.12.2011

With reference to the above subject, BCIC on behalf of the trade and industry wishes to submit for your immediate consideration the following :

### I. Preamble

A new notification vide No. ADCOM(I & C)/P.A/CR-31/2011-12 dated 03.11.2011 effective from 01.12.2011 is issued in supersession of the earlier notifications. The said notification 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).

### 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 upload/enter the 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 enters into the State of Karnataka is not only illegal but impractical.** It is a 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 completed 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. Bangalore Chamber of Industry and Commerce (BCIC) 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 for all goods 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 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 / purchases or movement of goods at Rs.20000/- is negligible and 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 and sharing of pass words and subsequent reconciliations become a painful and time consuming exercise;
- 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. Bangalore Chamber of Industry and Commerce (BCIC) suggests that the above 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 immediately. Alternatively, at least part C of the notification must be deleted. The least is to keep the new notification in abeyance till such time the dealers are educated.
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. 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, BCIC strongly advocates for it the notification be withdrawn with immediate effect.

For Bangalore Chamber of Industry and Commerce



Vinod Nowal  
President, BCIC

CC : Dr. H.M. Virupakshaiah  
Additional Commissioner of Commercial Taxes  
Intelligence & Co-ordination