

Ref.No. 2B/8096

20.11.2009

Shri H.N.Rao
Joint Secretary,
Commercial Tax,
Govt. of U.P.,
Bapu Bhawan Sachivalaya,
Lucknow.

Shri V.N.Garg, I.A.S
Executive Director,
Udyog Bandhu,
12-C, Mall Avenue,
Lucknow

Sub:- “Working Group” Meeting dated 21.10.2009 decisions discussions.

Sir,

On 21.10.2009, the working group discussed the “Agenda” and after deliberations, the following issues were initially moved for consideration by IIA :-

S.No. 3- Levy of 4% VAT on Transformers instead of 12.5 + 1%= 13.5%, as presently leviable :- The Deptt. on being enquired, informed that the revenue rise since the hike of rates (29 Sept., 08) from 4% to 13.5%, vide Notification No. 2758, dt. 29.9.2008 till Sept., 09 was 30% only. It was argued that since the hike in VAT Rate was 3.5 fold (Times) i.e. more than 300%, the reported rise was only 30%. This trend was indicative of the fact that the U.P. sales have come down heavily against such sales, when VAT rate was only 4%. This reflected that imports from Ex.U.P. have gone up proportionately. The chair had positive response to our logical demand and desired that the matter may be recommended for 4% VAT Rate to conserve and protect the State Industry.

No outcome has come out as yet. IIA would request your good self for an early Notification Rolling back the VAT Rate on Transformers to 4%.

S.No. 7- of Agenda : All Industrial Inputs to be Taxed at 4% and VAT Schedule 2 Part ‘C’:- The fundamental of VAT theory contained in value addition only & bringing down prices by slashing Manufacturing Cost, which could be done by bringing the VAT on Industrial Inputs to 4%. IIA had sent a list of such Raw Materials, as desired by Principal Secretary, Commercial Tax through Udyog Bandhu. A copy is again annexed (**Annexure- 1**) with the remarks that such goods are not directly required by consumer nor worked until fitted in the devices, process or directly as raw materials. The following commodities were however agreed in general to be included after justifications :-

(A): Paints & Varnish: - Here varnishes stood for insulation varnishes, which fall in Non-Decorative category. IIA agrees that sales profile of decorative and cosmetic Paints and Varnishes needs to be further studied before concluding whether it be shifted to 4.5% category from 13.5%, however, the non decorative, non cosmetic paints and varnishes as are not for the general consumer's use and usually work as insulator to machines or operative in the Industrial Units, must immediately be switched to 4.5% category for industrial inputs. Hope that the Deptt will find it apt to include them as essential requirement of Machinery & Plants.

(B): Machines & Tools :- Machinery, parts and components & Tools are essentially required for the operation & Manufacture of the output, without which neither manufacturing, nor state's economic progress can be conceived. This category of products have absolutely no significance for the retail non-industry buyer. It was argued at the meeting that – **“The sale of local machine supplier has to be viewed viz-a-viz his counterpart / competitor from other states. At VAT rate of 13.5%, local machine supplier can never compete against his other State competitor, who supplies at CST rate of 2%. Although 13.5% VAT can be availed as Input Tax Credit over a period of three years, however, the cost benefit analysis of 13.5% VAT against 2% CST can never match in terms of fund requirement as well as cost of funds. In the end local sale of U.P. will completely lose out and so the revenue from this particular head”. The chair had positive response to our logical demand and desired that the matter may be recommended for 4% VAT Rate to conserve and protect the State Industry.**

No outcome has come out as yet. IIA would request your goodself for an early Notification Rolling back the VAT Rate to 4%.

S.No. 12- To authorize private banks to accept VAT :- IIA advocated that Income Tax as well as Excise Deptt. have permitted H.D.F.C., I.C.I.C.I and other private banks to accept deposits since two years. The chair agreed with the argument. IIA is hopeful that the Department be kind enough to take a favourable decision on the points.

Issues for inclusion on Agenda for the next meeting are annexed (**Annexure-2**)

Thanking you,

Yours faithfully,

D.S. Verma
Executive Director

Copy forwarded to Udyog Bandhu in response to their letter No. 364, dated 04.11.2009.

Annexure - 1

Suggested issues for the next Working Group meeting

1. Assessing Officers issue Notices for provisional assesment after the case for the financial year in question is matured. This is because no exercise is done to detect errors at proper time. Higher Courts and circulars of the Deptt. do speak alike that this process is irrational and not in keeping with the law, therefore :-
 - (a) No provisional Assessment be done once the case for financial year has matured
 - (b) “Provisional” notice should strictly be issued only when the error or default is ascertained, verified and established and not to make the Dealer run purposelessly.
 - (c) This Notice usually be issued within one month from default, but not beyond three months.
2. Penalties on goods exigible to Entry Tax is also charged @ 40% alongwith 40% VAT making the total penalty 80%. Thus, destroying the liquidity of the money of assesses . This is excessive and hampers a free business, which should not be doubly Taxed. As Section-54 provides for static penalties, which generally are a blanket 40%, which is also irrational. Penalty Provisions should be made to vary according to circumstances, but their parameters must be fixed. Courts in murder cases award Death sentence in “Rarest of the rare” cases and even duration of sentence varies. So, under classified category barring discretion quantum of penalty may be fixed, so that an intentional evader and honest business may be identified and penalized or exonerated according to the default or “good faith”. The penalty clause ‘Not exceeding 40%’ may be worded. As such penalty on account of VAT & Entry Tax, **together** may not exceed 40%.
3. Commercial Tax Deptt. has abolished check-posts to allow even flow of goods across and not to restrict the freedom of Trade. But, Mobile Squads are operating and repeatedly intercepting the vehicle number of times. This creates hurdles in timely delivery of goods affecting manufacture process and commitment of sales. Therefore, for checking of vehicles en-route a “Model Code” for work be evolved and implemented strictly. Registered Dealers should be given an identity like “Green Card” for movement and rarely disturbed. A regulatory order for this purpose may kindly be made.
4. (a) There are problems in filing E-Return, because Annexure ‘A’ & ‘B’ to Return, being voluminous, are difficult to be uploaded as very often web is jammed. The system may be rectified.

(b) It is welcome that Form-38 is open for downloading, but the system is not fool proof. Therefore, a device for preventing misuse, copying etc. may be put in place to check the losses.

5. Export sales to Nepal are exempt. Higher Courts have ruled that if for satisfactory reasons the custom certificate is not submitted, the alternative evidence corroborating export may be accepted. Although such cases are rare, but the loss to exporter is immense. Therefore, in rare cases, where the exporters do not get custom certificate, alternative evidence may be accepted.
6. Export sales have been exempted under U.P.T.T. & Sales Tax. As well as C.S.T. Act does not envisage taxability of Exports. But, VAT provisions have taxed inputs for Exports and refund thereafter. Refund procedure is a complicated process and is always delayed affecting liquidity of money. Therefore, in the interest of boosting exports, they should be made exempt as were under U.P.T.T. and purchases preceding them also. Many officers under misconception do not recognize Form-H. Officers may kindly be directed that Form -H and other CST Forms still holds good.

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20.11.2009

Shri V.N.Garg, I.A.S
Executive Director,
Udyog Bandhu,
12-C, Mall Avenue,
Lucknow

Ref :- Your letter No.364, dated 9.11.2009 regarding Agenda of next Working Group Meeting.

Sir,

Kindly refer to your above letter for sending important issues for the Agenda of next Working Group Meeting. The Agenda for next working group meeting & issues discussed on 21.10.2009 are sent enclosed to this letter.

Thanking you,

Yours faithfully,

D.S.Verma
Executive Director

Ref.No. 2B/8100

20.11.2009

Shri H.N.Rao
Joint Secretary,
Commercial Tax,
Govt. of U.P.,
Bapu Bhawan Sachivalaya,
Lucknow.

Sub:- Agenda points discussed on 21.10.2009 and proposed issues for next Agenda.

Sir,

The working group meeting on 21.10.2009 discussed amongst other issues, the issues raised by IIA also.

The issues raised by IIA & discussed alongwith Agenda for next meeting of Working Group are annexed with this letter for your expeditious disposal please.

Thanking you,

Yours faithfully,

D.S.Verma
Executive Director