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16 October. 2007

To,
Shri Sunil Kumar IAS.
Commissioner Trade Tax, UP.
Vibhti Khand, Gomti Nagar,
Lucknow.

Subject:- Indian Industries Association comments and suggestions on proposed VAT Rules and VAT Act
Sir,

On 24th Aug.07, we have submitted to you IIA comments and suggestions on draft VAT Act of U.P. Thereafter we have got few more suggestions from our Chapters and we have also completed the study of the proposed VAT Rules.

As such we are annexing here with the Rules wise/Revised Section wise suggestions and comments on the proposed VAT Rules 2007 /VAT Act 2007 for your kind consideration. The said amendments/suggestions may kindly be considered favorably as been tuned with the spirit of the white paper agreed unanimously by all the states of the nation. IIAs general observations on the said Act & Rules are in short as follows:-

GENERAL OBSERVATION ON VAT RULES

- 1- The Rules proposed under the VAT suffer the tinge of extreme complexity abounding in a host of conditions 'ifs' & 'buts' as to make the pieces hard to join together & understand the crux of law & procedure.
- 2- It was gradual observation that the Trade Tax Act & procedures have a non-simple language which makes a layman understand them difficult. The VAT was aimed to undo the same which too has suffered still more with even higher rated touch of the said defect.
- 3- It was planned that a taxation law to be an easy revenue oriented piece, should clip the feathers of discretion of the "Act administering officer". But the purpose has suffered still more e.g. in original Trade Tax Act not more than five clauses or sub-sections existed but here in VAT Act & Rules they are so huge which have gone even beyond forty five Sub Sections or Rules or clauses which make the disjointed law, piece together, very difficult and opens door for excessive contradictions.
- 4- There were numerous liberal provisions in the Trade Tax Act which have been made stringer in the VAT Act without any purposeful objective.
- 5- Not the least consideration has been given to judicial verdicts which have Critically descended upon Trade Tax provisions during the long span of about 59 years for their being arbitrary & almost all the same provisions have been reiterated in VAT.
- 6- Therefore there is need to address these bona-fide concerns of business community & headache of Assessing & Enforcement officers & curtail the future litigation to allow a smooth go to business & revenue in a coherent manner.

- 7- It is agreed that the VAT law should have intent for progressive revenue orientation, but the extent, bounds, modes, procedures & conducts should be crystal clear to avoid complaints, strikes, turmoil's & unnecessary reciprocal uncertainty & also litigating still more.

THE VITAL PROBLEMS NOT ADDRESSED IN ACTS & RULES

1. From the very beginning of the Sales Tax/Trade Tax Act litigation has been in vogue & the judicial pronouncements during this long period of about sixty year or more have been full of contradiction. These landmark decisions are never addressed. This is high time that those leading & prominent cases be identified by a special committee of 3 members from Trade Tax Bar & Business under the Chair of President Tribunal & oversee their appropriate incorporation in Act & Rules.
2. It is a well known procedure of business that goods sent to Gove Deptt & big corporates are subject to inspection. Such inspection even take place one year after the goods are received & a rejection of goods is made even after one year. Such goods can in no case be conveniently unaged to be returned within six months. Accommodation of cases of such types may also be made in the Provision of Return of Goods on justifiable & genuine grounds.
3. Cash Sales are restricted under Income Tax Act in certain circumstances Cash deposits & withdrawals are also subjected to scrutiny in Income Tax. If a separate Law/Rule is made under VAT the union law will prevail. Therefore either the same Income Tax Law be persued or such arrangements made in law as to address both requirement may be supportive & complimentary to each other.
4. It has been seen during the track record that political powers at the helm of affairs bring political Notifications to suit their own vested political interest & notify that which is unconstitutional & against revenue & development of State. Very recently Notification No. KA. NI-2-1283 dated 13 July 2006 against Article 301 & 304 of Indian constitution was issued to suit such purpose & carried to the extreme suppression of home Industries. Such Act should outright be barred under the Act & Govt. as well as executive should be assigned identified responsibility in case the lapse is committed. It should unequivocally be envisaged & provided in Act prohibiting Notifications & changes on such points.

Specific comments on draft VAT Rules and VAT Act are enclosed at annexure I & II respectively.
Submitted for favourable consideration.

Thanking you,

Yours Truly

D.S.Verma
Executive Director

ANNEXURE-I

PROPOSED CHANGES IN VAT RULES

Rule 16 :

This rule needs substitution of one year in place of three years, (instead of three consecutive years)

Rule 18 :

Inventories for Input Tax Credit may be made in detail to identify the correct amount. Other inventories may be allowed to be kept of Raw Materials & finished goods only. "At every stage" will mean that the dealer instead of business will always be preparing unnecessary inventories & at every stage depend on the discretionary mercy of Assessing & surveying officer. So this arbitrary part be deleted.

Rule 20 :

To be completely modified as to enable such inventories to be submitted along with the extract of Accounts at the time of hearing of final case.

Rule 21 :

Input tax credit should only be not given to those dealers who do not fall within the following. Other arbitrary provisions may be withdrawn.

- 1- Who had not been liable under this Act for the preceding three years or beyond from the date of implementation of the Act.
- 2- Non VAT goods
- 3- Do not possess bona-fide proof of payment of tax
- 4- Had purchased goods from unregistered dealers or against form No. 3-A (Trade tax).
- 5- Are goods unconditionally exempt from payment of tax.
- 6- The rule may not be made so lengthy as it may not be synthesized & properly understood by tax payers in general & should not open industry for professional and consultants & legal interpreters etc.

Special

- 1- Word “dispossessed” in the rules may be defined to enable a correct understanding.
- 2- **Input tax credit not allowable & reverse input tax credit** are explained in the rules which are more lengthier than allowance of input tax credit. Surprisingly every Rule, & Section of the Act have in average more than thirty five sub-rules & sub-sections which impairs the crux of the point. These numbers may be Synthesized, Reduced, & simplified so as to be comprehensible.
- 3- In clear terms Input Tax Credit be allowable on all raw materials, plant & machinery, all items for the purchase of which concession in Sec 4-B of Trade Tax Act was allowable & also those allowed by Apex courts in their verdicts & Notified by Govt as well liberally to avoid future litigation, & ensure Smooth Revenue income & business as well.

Rule 24 (A) (i) &(ii) :

To avoid uncertainty of claim of refund going under screening of check every now then & by different officers having differing opinions, a clear Refund order of the aggregate amount allowable & accepted should be given which should be endorsed to be valid for next consecutive 12 installments (not 36) because the industry has to pay heavy interest on its financial business setup. More over normal rate of interest should also be given by Department on the retention of refundable amount and dwindling installments accordingly.

Rule 24 (B)

This claim should unconditionally start from the next month it falls due & should be adjusted till the last of Financial year & the balance if any at the end of such year be sent to Dealers through process server.

Rule 25:

In this rule provision for exclusion of goods, destroyed or lost in natural calamity, losses done by insect termites etc, theft & events of same nature & others which are beyond human control as well as mechanical losses should also be made.

Rule 28(3)

“Presumption” should not be arbitrary but it should be provided,” **Not exceeding the average** to be based on nature of goods quantity, measure quality, brand & popularity of the same said goods.

Rule 28(4)

Is arbitrary & categorical provision will invite disobedience of law & is impractical as well. Therefore to be deleted.

Rule (29)

Similar modifications as are proposed in R. 28 may be made appropriately in this Rule also.

Rule 30(1)

Substitute the words "Where tax invoice has been issued by the selling dealer to the registered purchasing dealer but the same has been lost, destroyed or defaced, benefit of input tax credit shall be allowed on the basis of tax payment certificates issued by the assessing authority of selling dealer" with "Where tax invoice has been issued by the selling dealer to the registered purchasing dealer but both copies of invoice - original as well as duplicate of the same have been lost, destroyed or defaced, benefit of input tax credit shall be allowed on the basis of Copy of list filed by the selling dealer alongwith tax return and is certified by the selling dealer"

Rule 37(1)(2):

The 'first charge' has already been defined in various central & state laws which may not be disturbed as it is not the "business" to create "first charge" but the Govt. orders which legally would create "first charge." So dealer's undertaking is meaning less & will interfere with his financial transactions & business.

Rule 37(1)(b):

There is no VAT Act 2003- The same may be deleted.

Rule 37(2)(d)(e)(f)(g):

The period of one year may be mentioned to avoid arbitrariness of discretion.

Rule 37(4):

"In all Respects" should be defined.

Rule 39:

The period of relining account books for eight years & even beyond is arbitrary. It should not exceed more than three years so that expeditious disposal of the accumulated pendency so far & proper disposals in appeals & clear identification of revenue receipts & adequate enquiries of evasion may be made by the dept timely to deprive the evader from running away & manipulating the circumstances & Revenue also be prevented likewise from intimidating the dealers off & on for a very long period of time.

Rule 40 (1) to (16):

Delete the Section 21 (4) to (9) and entire Rule 40

Rule 42 (1) to (5):

The Rule be substitute :- (1)Audit report referred to in sub-section (17) of section 21 of the Act shall be submitted by the dealer referred to in that sub-section to his assessing authority in Form No.3CD [as provided in rule 6-G (2) of Income Tax Act] alongwith the annual return of turnover and tax referred to in sub-section (7) of section 24 of the Act.

Rule 43(5)

Prescription of minimum sale value as Rs. Two hundred Fifty will become a lucrative provision for evaders making sale adjustment & evasions there from. It should be reconsidered along with section 22(4) simultaneously.

Spl :-

In various clauses of the Rules the "Words Printed also computer printed" word should also be added as to have a genuine recognition of the books of accounts.

Rule 43(12)

The minimum & maximum size of bill, invoice or memo be also made accordingly so as to suit the computer stationary also.

Rule 43 to 48

There has been a great difficulty in the verification of deposits, Tax deductions at source & recoveries etc so far. Huge complaints lie on this count helpless officers directing dealers to general section for verifying to get benefit is clearly unethical which can safely be plugged in the present system by making the verification update by registering or assessing authority or any officer authorized is this behalf prescribed certificates/declarations of deduction too either are not issued by dept. Or contractor do not obtain them due to cost factor. Therefore option should cease & a declaration be made in prescribed form mandatory at every stage whether deposited in bank & that certificate/declaration should be treated at par with treasury challan.

In (iii) & (iv) of Sub Rule (1) of Rule 44, word " ten lakh rupees" must be substituted with "4 Crores Rupees" as also provided in Central Excise Rule for SSI

RULE 49

A time bound scheduler for the refund procedures & finalization there of should be prescribed mandatory & compulsory payment of interest thereafter in case of delay should be prescribed. The drawing & disbursing or countersigning authority should invariably record a certificate to the effect that whether interest is due or not & if due should straightway ensure immediate disbursement thereof to avoid long standing complaints of late refunds.

PROVISION OF 49(4)

Be modified to allow the even flow of refunds swiftly by substituting Rs. one lakh in the place of 25 thousands.

RULE 49(5) & (6)

Should also be modified to ensure that countersigning authority monitors & attests entries of refund register and issues\ prescribed certificate to the same effect during the process.

RULE 49(13)

Provision for extension of date of voucher on the same voucher which has since expired should be made to avoid delay of repetition of procedure and undue harassment.

RULE 49 (24)

Is arbitrary & be deleted. All due precautions & safeguards should be taken by the authorities themselves before making refunds & should bear the responsibility therefore.

RULE 58

The time frame within which the declaration is to be presented for endorsement should be made & that should not be less than 60 hrs. within the termination of the R.R. or any delivery note prescribed therefore.

RULE 69

Should be modified to allow applications as well which have not matured as a case so far. So that fair play & justice under the principle underlying, transfer of case, may be ensured judiciously.

RULE 73

The record may be made available on the very day within two hours of the application being filed & not ten days. The modification may be made accordingly.

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