

Ref. 2b/7685

4 April 09

Shri Anil Sant,
Commissioner Commercial Tax, U.P.
Vibhuti Khand Gomti Nagar,
Lucknow

Subject: Unlawful Detention of Vehicle No. UP 78 AN/1746 Transporting consignment on 22/03/09 of M/s Amitech Textiles Pvt. Ltd, Panki Kanpur by Asstt. Commercial Tax (Mobile Squad) Allahabad.

Sir,

IIA had been representing to your goodself on the strength of feedback from its District Chapters to kindly issue specific & classified direction to field officers of Mobile Squad with regard to search & seizure of vehicles. Every day cases are reported where consignments are detained in direct contrast to standing orders.

IIA is thankful to your goodself that a similar type circular has been issued exhaustively by your goodself (circular No. 0809100 dated 3/2/09) But to our Utter surprise the field officers are faltering to comply the said circular too. With this background in view a recent illustration of how the practical working goes is submitted for your kind perusal:-

On 22/3/09 Truck No UP-78AN/1746 Transporting the consignment of one of our Members M/s Amitech Textiles Pvt. Ltd, Panki-Kanpur was detained by Asst. Commissioner Mobile squad Allahabad & served a show cause No. 117 dated 22/3/09. On submitting the reply the consignment was seized & was issued seizure memo No. 397 dated 23/03/09 & amount of security Rs. 41360/- recovered through receipt No. 542962 dated 24/03/09. The grounds of show cause were as follows :-

- (i) Seller has issued Tax Invoice, But omitted to record the TIN No. of the purchaser on the said Invoice.
- (ii) That the Vehicle No. was not mentioned in the Tax Invoice, nor on G.R. From this omission transport of goods is apparently with intention to evade Tax.

While replying to above it was accepted that the TIN No. was in advertently omitted from mention. However the Receipt No. 09118190079420 dated 21/1/09 of the deposit of the 3rd Quarter 09 Return was submitted to prove the bona-fides of the purchaser. (TIN No. quoted on Receipt). This was sufficient to convince the officer on the strength of Deptt. Receipt. However on Tax Invoice the Mobile No. of the Purchaser was also written, but the officer did not enquire from him about the transaction regarding the 2nd objection under show cause. Nowhere in Sec. 22 or Rule -44 or Sec. 48 the No. of Vehicle has been required to have been made compulsory to be written on Tax Invoice or G.R. Moreover the Truck No. was physically verified by the Officer with relevant papers pertaining to Truck. G.R. is not regulated through VAT Act on Rules, Therefore this objection too is based on flimsy grounds. Goods can only be seized under VAT Act only if :-

- (i) The goods if not traced to bona-fide Dealers----- whereas both the purchaser and seller are duly Registered Dealers filing regular Returns as evident from the Receipt of the Returns as mentioned earlier.
- (ii) If the Goods are not entered in books of Accounts, while in this case goods find Entry in books of Accounts. Moreover no finding regarding Account books has been

recorded in seizure Memo by the Office seizing goods. For your kind perusal Sec-48 reads:-

“Where any officer referred to in sub Sec. 48 (1) has reason to believe that the goods found in any vehicle, vessel, building or place are not traced to any bona-fide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his Accounts, Registers or Documents, maintained in the ordinary course of his business, he shall have power to seize such goods.”

None of these lapses is proved. The referred circular No 0809100/03.03.09 is duly recorded and rejected by the seizing officer mentioned in seizure Memo. The circular in its 2nd Para, Clearly protects against undue harassment of Regd Dealers by reading; “To ensure that Registered Dealer are not put to unnecessary harassment by the investigation & no obstruction in their business is caused; while & on the other side unregistered & illegal business doing involved in evasion are to be deterred”.

The Norms laid down for Registered dealers clearly illustrate at S. No. 2. The goods of Registered Dealers will only be seized if it is not accompanied by Documents, the Declaration form pertaining to goods is non-genuine or stolen, or different than the mentioned in records, in exceed of the goods mentioned in documents.

At S.No. 1:- No books will be summoned if any of the documents as Tax Invoice/Sales Invoice/Challan/Bill/Cash Memo/Transfer Invoice is available.

The circular as well, as Act & Rules envisage preferable protection for Registered Dealer whereas in this case the Registered Dealer only have been harassed.

It is emphasized in the end that the principle for Registered Dealers has been reiterated through host of circulars issued to say that Security money or seizure in case of Registered Dealer will be resorted to unless a fraud or cheating manifest evasion is substantiated. Other adverse point if any will be sent through a report to the officer of the jurisdiction.

In this case if any Technical omission was there (Though Explained & Verified on the spot) the adverse report could only be sent to jurisdictional officer. The seizure is a case of clear harassment.

We have been bringing such cases of non compliance of the circular to your kind notice in the past also but the cases of harassment of the genuine dealers are still being reported increasingly. We therefore very humbly request you to kindly take appropriate actions to stop such incidents in future.

Thanking you

Yours truly,

D.S. Verma
Executive Director