

Ref No. 2b/7756

16 May 2009

The Executive Director,

Udyog Bandhu,

12-C, Mall Avenue

Lucknow

Subject:- Regarding provisional refund of ITC to Exporters in Sec-41 of VAT Act as notified vide Notification No. 497 dated 28.02.09 (U.P. Act No. 11 of 2009).

Sir,

IIA has received feedback from various Exporters (IIA Members) that Sec. 41 of VAT Act which enabled the Exporters a provisional refund has been stiffed to such an extent that a good & Exporter friendly provision will become meaningless with the substitution of Five Condition as laid down in the above notification dated 28/02/09 reproduce below:-

“Provided further that, before granting refund, the assessing authority may require the dealer to furnish security of amount equivalent to amount of refund to its satisfaction where:-

- (a) the dealer has been involved in tax evasion under this Act or erst-while Act or under the Central Sales Tax Act, 1956; or

- (b) the dealer has obstructed or prevented the officers empowered under this Act in performing any of his functions or duties assigned to him under this Act; or
- (c) the dealer has misused in any way the declaration or the certificate prescribed under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act or under the Uttar Pradesh Tax on the Entry of Goods into Local Areas Act, 2007; or
- (d) the dealer is defaulter of the payment of tax on the sale or purchase of goods under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act; or
- (e) the dealer has violated any provision of this Act resulting in the loss or revenue.

These are very vague conditions because the situations like “has been involved in evasion, obstructed the Officer, misused any forms, defaulter, violated any provisions causing revenue loss can be arbitrarily interpreted to suit his imaginative and presumptive discretion. The above ambit of discretion has been extended to the cases relating U.P.T.T., CST and Entry Tax also; whereas UPTT & Entry Tax Act do not have any bearing on VAT. These provisions for struggling Export Industry will pull them off the international market in the time of competition & acute recession. Hardly any Exporter can bank upon I.T.C under VAT.

This is irrational as how an offence or lapse under C.S.T or U.P.T.T will play their rolls in VAT when they have their own laws & penalties and are valid under “saving” section of VAT Act. Misuse of forms has a separate penalty provision, obstruction in duty & violations of any other provision have separate classified penalties, how for one & the same case, double punishments are provided. It is surprising that when Sec. 54 of U.P. VAT Act as well as other section have provided for separate penalties in specific terms, how a double and triple provision for the same offence be resorted to discourage the export.

IT is therefore requested that such provisions in Sec- 41 may kindly be deleted/dropped.

Thanking You

Yours truly,

D.S. Verma

Executive Director