

Dated : 30.4.2012

**Memorandum to Shri Sudhir Kumar
Commissioner, Commercial Tax**

1. The Hon'ble Dy. Chief Minister cum Finance Minister, Bihar has announced budget proposals but the corresponding notification to carry out such proposals have yet to be made, particularly, the proposal that the rate of entry tax will not be kept more than the VAT rate.
2. Bihar Entry Tax Act, 1993 is a parallel Act which requires filing of monthly statement, quarterly returns as well as Annual Return and thus 17 returns are required to be filed during the financial year and in majority of the cases approximately 80% the entry tax deposited is adjusted against the Output Tax payable and as such the entry tax needs to be abolished altogether so as to save the time of both the dealers as well as the department in filing the entry tax and pursuing those returns by the department.
3. **VAT reimbursement to be allowed as per the provision of Industrial Policy, 2006:**
 - a) The Industrial Incentive Policy, 2006, vide Gazette Notification dt. 25.7.2006, categorically provides for reimbursement of entry tax as well as C.S.T. paid towards discharge of VAT liability. However, this is being denied continuously and consistently by the Commercial Taxes Department (photo copy enclosed).
 - b) The Commercial Taxes Circle Offices are not forwarding the VAT reimbursement applications of eligible industrial units for the period 1.4.2011 to 30.6.2011 to the Commercial Taxes Headquarters on the plea that the department has not issued any advice to the circle offices that the Government has extended the Industrial Incentive Policy 2006 up to 31.12.2011 or up to the date on which the Industrial Incentive Policy 2011 is made effective.

We are of the view that the Commercial Taxes Department should issue a clarification in this respect at the earliest enabling the affected industrial units to avail their right of the said incentive for the aforementioned intervening period i. e., 1.4.2011 to 30.6.2011 without any further loss of time.
 - c) VAT Reimbursement under Industrial Incentive Policy 2006 & 2011 pending before the Commercial Taxes Department should be done immediately in order to improve the image of the State. In many cases, Re-imburement approved by the authorities have not been done till now.
4. The Agricultural implements manually operated or Animal Driven vide Sl. No.1 of Schedule - I is fully exempt but the Department is still persisting the dealers to pay/deposit VAT @ 4% on these items and as such the Chamber sincerely feels that necessary direction/instruction may kindly be issued to all those concerned to go purely by the entries of the Schedule.
5. **Simplification of VAT reimbursement procedure:-**

The Government of Bihar has constituted a Committee for simplification of the prevalent procedure of VAT reimbursement but unfortunately the Committee has not yet started the functioning, so it is requested that the necessary action may kindly be taken in this regard.

6. Denial of carry forward of Input Tax Credit :-

Under Section 16 of the Bihar VAT Act, a dealer was allowed to carry forward the excess input tax credit for adjustment against the Output tax of subsequent months but by virtue of recent amendment vide gazette notification no. LG-1-4/2012/Leg. 293 dated 31.3.2012 the provision has been amended to the effect that

"such excess of input tax credit shall be carried forward for adjustment against the output tax of subsequent month not being a month later than the last month of the financial year, and any amount of input tax that remains unadjusted in terms of the return under sub-section(3) of Section 24 shall be refunded, subject to the provisions of Section 68, 69, 69A and 71 of this Act, within three months, following the month in which the Annual Return and Tax Audit Report are furnished ”.

The aforesaid amendment is totally unrealistic and unpractical in the sense that goods purchased by a dealer in the month of March cannot be presumed to be sold on or before the 31st of March and this is going to cause a great hardship to the dealers and also the loss of revenue to the State for the simple reason that companies invariably makes push sales of the goods into the market in the month of March and if input tax credit on such purchases is denied not only the sale will be affected but also the State could lose the revenue.

There is another side of the story that the State has enriched its coffer by collecting VAT at the time of purchases but the benefit of the said tax deposited is being denied at least for minimum of 12 months (9 months for filing Annual Return and Tax Audit Report plus 3 months sought by the Department, for the purpose of Refund) it is an admitted position that the business are being run on money borrowed from the banks on which hefty interest is being charged and the denial of the Input Tax Credit amounts to the blocking of running Capital and payment of interest thereon which cannot be said to rationale for the development of the State. This needs urgent re-consideration and Input Tax Credit should be allowed to be carried forward at least for two years, from the end of the Financial Year. It is worth mentioning here that even the neighboring State of West Bengal and Jharkhand, besides many other states, are allowing the carry forward of the input tax credit.

Last but not the least, the State of Bihar, particularly, the Commercial Taxes Department has a very poor record in the matter of refund of sales tax and your good self must be aware of this very fact.

In this connection, we are further to state that we have already drawn your kind attention on this issue as well as the attention of the Hon'ble Dy. Chief Minister and it appears to us that the aforementioned amendment need further amendment to enable

the dealers to carry forward their ITC FOR A CERTAIN PERIOD. So we would request you till a final decision on our aforesaid request is taken, the matter may kindly be kept at abeyance.

7. New Procedure for issue of Declaration – Form ‘C’:

The Chamber would also like to draw your good self's kind attention towards the Circular dt. 17th April, 2012 addressed to the Officers of the Commercial Taxes Department and a detailed procedure and guideline has been issued for the purpose of issuance of Form – C. By the said guideline and procedure each and every dealer who makes inter-state purchases is required to furnish Declaration in Form – C and by virtue of the procedure and guidelines issued vide Circular dt. 17.4.12, the dealers will have to make a bee-line to the sales tax department. The Hon'ble Minister has stated officially and publicly that the dealers will seldom be required to visit the sales tax offices but this very circular is totally against the sovereign promises made by the Hon'ble Minister.

The requirement of furnishing copy of Challan in support of tax deposited and copy of returns filed amounts to duplicity of the works as the taxes and the returns are being made electronically which are readily available with the Assessing Officer of the Circle concerned. Further, the guideline issued vide Paragraph No. 4.1 and 4.2 will simply lead to the harassment of the dealers at the hands of the officers of the Department.

Last but not the least, the observation made in Paragraph No. 4.4 should have been avoided as presumption has been made with regards to the monthly expenses of dealers which are nothing but presumption and surmises and based on the edifice that the dealer is totally dependent of the business only and does not have any other source of income and moreover the observation made is not happily worded.

8. Scrutiny of Returns under Section 25

Amendments has been made to the provision of Section 25 by which a procedure has been laid down for issuing scrutiny notices but the said provision are not being followed by the Department.

9. Section 56 being misused :

Section 56(1) relates to the production of the books of accounts but the same is being misused invariably by issuing notices under Section 56(1) for passing assessment orders and determination of the turnover and tax liability.

10. Section 31 :

Section 31 provides for initiation of the proceeding on certain conditions but the notices are being issued for the purpose of assessment and even best judgment assessments are being made under this Section.

The Departmental Officers are issuing Notices under Section 31 for verification of the claims and deductions made in the Returns which is totally against the spirit of the

provisions and it may be stated that the notices are issued for the reason other than merit.

11. Deduction of tax at source from the payments of bills of Works Contractors

The contractors are great hardship on account of deduction of TDS at the flat rate of 4% while making the payment of the bills and also the contractor has to deposit Entry Tax on the import of scheduled commodity and the end result is that the contractor is entitled to a huge refund. Refunds are seldom issued as per the provisions of the Bihar VAT Act, 2005. It is, therefore, suggested that suitable amendment should be made to reduce the rate of TDS @ 2% against the payment of bill of the contractors.
