

## CHAPTER-V

### RETURNS, ASSESSMENT, RECOVERY AND REFUND OF TAX

**17. Submission of returns under section 29.—** (1) Every registered dealer or any dealer liable to pay tax whose turnover of taxable goods in any assessment year exceeds Rupees 10 (ten) lakhs, shall furnish to the Prescribed Authority, a tax return for each month in Form-13 within the next twenty one days of the succeeding month.

*Explanation.—* For the purpose of this sub-rule, the due date for submission of the tax return, for a particular month shall be the twenty first day of the following month.

(2) Every registered dealer or any dealer liable to pay tax under the Act, other than a dealer referred to in sub-rule (1), shall furnish to the Prescribed Authority, a tax return for each quarter in Form-13 within twenty one days of the succeeding month from the date of expiry of each quarter.

*Explanation.—* For the purpose of this sub-rule, the due date for submission of the quarterly tax return for a particular quarter shall be the twenty first day of the month following the quarter.

**Amendment:** In Rule 17, in sub-rule (1) “Rupees 3(three) lakhs” has been substituted by “Rupees 10 (ten) lakhs” vide Notification No. FTX.55/2005/Pt-II/96 Dtd. 29<sup>th</sup> March, 2008 published by Assam Gazette Extra ordinary No. 89, Dtd. 29<sup>th</sup> March, 2008.

(2A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) of this rule, every registered dealer who is a holder or a holder in due course of Certificate of Entitlement under the Assam Industries (Tax Remission) Scheme, 2005 shall furnish to the Prescribed Authority periodic tax return in the manner laid down in such Scheme;

(2B) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) of this rule, every registered dealer who is permitted to avail any scheme of composition of any tax liability within the meaning of section 20 of the principal Act shall furnish to the prescribed Authority periodic tax return or statement of the quantity of goods imported in the manner laid down in such scheme.

**Amendment:** The new sub-rule (2A) and (2B) has been inserted vide Notification No. FTX.29/2003/25 Dtd. 4<sup>th</sup> November, 2006 published by Assam Gazette Extra ordinary No. 272, Dtd. 14<sup>th</sup> November, 2006.

(3) The tax return shall be accompanied by a receipt from the Designated Bank, a crossed cheque or a crossed demand draft for the full amount of tax payable on his taxable turnover during the month or the quarter to which the return relates.

*Explanation.1—* For the purpose of Explanation 2 to clause (b) of sub-section (1) of Section 10, the challans for payment of tax received by a bonded warehouse from a retail licence holder or by a excise

warehouse from a retail vendor, shall also form part of the full amount of tax payable on the taxable turnover of such bond or warehouse for the month to which the tax return relates.

*Explanation 2-* A receipt from designated bank may be a challan duly signed by designated bank as proof of payment or e-challan generated through computer network as proof of payment. However, e-challan shall have to be duly self attested with signature and seal by the dealer concerned when it is submitted along with a tax return.

*Amendment: In the principal Rules, in rule 17, in sub-rule (3), "Explanation" has been re-numbered as "Explanation 1" and thereafter Explanation 2 has been inserted vide Notification No. FTX.70/2007/Pt-I/30 Dtd. 21<sup>st</sup> May, 2009 published in the Assam Gazette Extraordinary No. 153 Dtd. 21<sup>st</sup> May, 2009.*

- (4) If the amount paid by a dealer along with the tax return under sub-rule (1) or (2) or (2A) or (2B), is less than the amount of tax payable by him, the Prescribed Authority shall serve a notice of demand and the dealer shall pay the sum demanded in the said notice within the time and in manner specified in the notice.

**Amendment:** The words and numerals "or (2A) or (2B)" has been inserted vide Notification No. FTX.29/2003/25 Dtd. 4<sup>th</sup> November, 2006 published by Assam Gazette Extra ordinary No. 272, Dtd. 14<sup>th</sup> November, 2006.

(5)(a) Every dealer as mentioned in sub-rule (1) and sub-rule(2) in addition to the tax returns furnished, shall submit an annual return in Form-14 within two months after the close of the year to which the return relates;

(5)(b) Every dealer as mentioned in sub-rule (2A) and sub-rule (2B) in addition to the tax returns or statements of quantity of goods imported furnished shall submit an annual return or statement of quantity of goods imported in the Format as may be laid down in the applicable tax remission scheme or composition scheme:

Provided that in case of a dealer who is liable to produce a certificate of Audit of Accounts by a Chartered Accountant under section 62, the annual return shall be submitted within seven months from the end of the year to which the return relates.

**Amendment:** In the sub-rule (5), for the existing provisions, rule (5)(a) and (5)(b) has been substituted vide Notification No. FTX.29/2003/25 Dtd. 4<sup>th</sup> November, 2006 published by Assam Gazette Extra ordinary No. 272, Dtd. 14<sup>th</sup> November, 2006.

- (6) Every registered dealer who submit a return under sub-rule (5) shall,

except when tax has been paid in advance in full with the tax returns furnished, submit along with the annual return a receipt from a Designated Bank, crossed cheque or crossed demand draft in favour of the Prescribed Authority for the full amount of tax payable for the year, half year or a quarter, as the case may be, on the basis of the return after deducting there from the advance taxes, if any, already paid for the year, half year or the quarter, as the case may be.

- (7) Where any dealer other than a registered dealer liable to pay tax fails to submit the return under sub-section (3) of section 29 the Prescribed Authority shall serve on such a dealer a notice in Form-15 requiring him to furnish such return within such date as may be specified in the notice.

(8)(a) In case of discovery of any omission or any other error in a monthly/quarterly tax return filed, the dealer may furnish a revised monthly/quarterly tax return at any time before expiration of time limit prescribed by rule 17(5)(a) or 17 (5)(b), as may be applicable for filing annual return by him;

(b) In case of discovery of any omission or any other error in the annual return filed, the dealer may furnish a revised annual return within a period of six months from the due date of submission of annual return:

Provided that no revised tax return or revised annual return shall be entertained if the case has been taken up for audit assessment and notice to that effect has already been served on the dealer.

*Amendment: The existing sub-rule (8) has been substituted vide Notification No. FTX.70/2007/Pt-I/30 Dtd. 21<sup>st</sup> May, 2009 published in the Assam Gazette Extraordinary No. 153 Dtd. 21<sup>st</sup> May, 2009.*

(Prior to this the sub-rule (8) read as follows:

- (8) In case of discovery of any omission or any other error in the tax return or annual return filed, the dealer may furnish a revised tax return or the revised annual return, as the case may be, within a period of six months from the due date of submission of tax return or annual return, as the case may be:

Provided that, no revised tax return or revised annual return shall be entertained if the case has been taken up for audit assessment and notice to that effect has already been served on the dealer.)

- (9) Omitted.

**Amendment:** The sub-rule (9) has been omitted vide Notification No. FTX.29/2003/25 Dtd. 4<sup>th</sup> November, 2006 published by Assam Gazette Extraordinary No. 272, Dtd. 14<sup>th</sup> November, 2006.

### **Submission of returns in case of branches.**

**17(A).** (1) In case of a dealer having more than one place of business in the State all returns and annual returns prescribed by the rules shall be substituted by the head office in the State and shall include the total turnover of all the branches of his business.

(2) Each branch shall also-

(a) submit to Prescribed Authority of the area in which it is situated, tax return(s) and annual return pertaining to transaction made at such branch,

(b) furnish a declaration to such Prescribed Authority to the effect that the turnover derived at the branch is included in tax return(s) and the annual return submitted by its head office and specifying the name and address of such head office:

Provided that such dealer shall also submit along with the returns and annual return of the head office, the copies of the returns and annual return, as the case may be, submitted by each of its branch to the Prescribed Authority of respective area.

### **17B. Selection of dealers for electronically transmitting data in filing the return referred to in rule 17 and manner in which such returns to be furnished by dealers so selected.-**

(1) The Commissioner may, from amongst the registered dealers who are required under rule 17 to furnish returns, select such dealers on such consideration as he may deem fit and proper, for transmitting return electronically. Any dealer not selected may also opt to transmit return electronically.

(2) The dealers so selected shall be informed, in writing about such selection by the Commissioner.

(3) Every dealer who has been selected or who opts under sub-rule (1) shall furnish return-

(a) firstly, by way of transmitting the data in prescribed form either under digital signature or without any digital signature electronically to the web-site [www.taxassam.co.in](http://www.taxassam.co.in), in respect of return period during which such selection is made and in subsequent return periods until he is left out of such selection by the Commissioner; and

(b) secondly, by way of furnishing the return in paper form to the Prescribed Authority.

(4) (a) The time limit for furnishing return electronically and in paper form will be same as prescribed in rule 17;

(b) the date of furnishing return electronically or in paper form, whichever is later, shall be accepted as the date of furnishing such return.

- (5) The provisions of rule 17 shall, mutatis mutandis, apply in the manner of furnishing returns under this rule.

*Amendment: In the principal Rules, after rule 17, new rules 17A and 17B has been inserted vide Notification No. FTX.70/2007/Pt-I/30 Dtd. 21<sup>st</sup> May, 2009 published in the Assam Gazette Extraordinary No. 153 Dtd. 21<sup>st</sup> May, 2009.*

**18. Forfeiture of unauthorised and excess collection of tax and penalty under section 31.—**

(1) Where any person collects any sum by way of tax in contravention of the provisions of sub section (1) of section 31, the Prescribed Authority shall serve a notice in Form-16 upon such person requiring to appear on him the date and at the place specified in the notice and to show cause as to why the amount so collected unauthorisedly should not be forfeited to the Government account.

(2) If there is no response to the notice issued under sub-rule (1) within the date as specified in that notice or the explanation is not found satisfactory, the Prescribed Authority shall impose penalty as provided under sub-section (5) of section 31.

(3) When the amount of tax collected under section 31 is forfeited, the Prescribed Authority shall publish or cause to be published a notice in Form-17 on the notice board of the Prescribed Authority besides sending a copy of such notice to the person from whom the forfeiture is made.

(4) For the purpose of sub-section (10) of section 31, the application for making a claim of the forfeited amount shall be in Form-18.

**19. Scrutiny of returns.—** For the purpose of sub section (2) of section 33, the Prescribed Authority shall issue a notice in Form-19 to the dealer for curing the defects in the return and to make the consequential payment of tax and interest, if any.

**20. Manner of completion of provisional assessment.—** Where the Prescribed Authority makes a provisional assessment of tax and interest under section 34, he shall issue a notice of demand directing the dealer to deposit the sum specified in the notice within twenty one days from the date of the service of such notice.

**21. Self assessment.—** Except the cases selected for audit assessment under rule 22, all other cases shall be deemed to have been assessed to tax under sub-section (1) of section 35.

**22. Audit assessment.—** (1) The following categories of cases may be taken up for audit assessment under section 36:-

- (i) gross turnover exceeding five crores rupees in a year;
- (ii) claim of input tax exceeding ten lakh rupees in a year;
- (iii) claim of refund exceeding one lakh rupees in a year;
- (iv) claim of sales made in the course of inter-State trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into the territory of India exceeding twenty five lakh rupees in a year;

- (v) fall in gross turnover or payment of tax compared to last year;
- (vi) claim of sale, purchase or consignment of goods not matching with the other party to the transaction;
- (vii) exceptional cases in which ratio between purchases and sales or between input tax and output tax or between stocks and sales is way out of the general trend in the trade or industry;
- (viii) cases based on definite intelligence about evasion of tax;
- (ix) cases selected at random;
- (x) cases of any particular trade or trades which the Commissioner may select; and
- (xi) cases in which the dealer fails to complete the return(s) in material particulars after being given an opportunity for the same.

(2) The notice required to be served on the dealer as required under sub-section (1) of section 36 shall be in Form-20.

**23. Best judgment assessment.—** The notice required to be served on the dealer as required under sub-section (1) of section 37 shall be in Form-21.

**24. Assessment of dealer who fails to get himself registered.—** For the purpose of sub section (1) of section 38, the notice to be served by the Prescribed Authority on the dealer shall be in Form-22.

**25. Escape assessment.—** (1) The Prescribed authority shall, in any case where he considers necessary to make a re-assessment under section 40 in respect of a dealer, serve a notice in Form-23;

(a) calling upon him to produce his books of accounts and other documents which such authority wishes to examine together with any objection which the dealer may wish to prefer and any evidence which he may wish to produce in support thereof; and

(b) stating the period or the return periods in respect of which re-assessment is proposed, and he shall fix a date ordinarily not less than ten days after the date of the service of the notice for producing such accounts and documents and for considering any objection which the dealer may prefer.

(2) A dealer who has been served with a notice under sub-rule (1) may prefer an objection in writing personally or through an authorised agent.

(3) The Prescribed Authority may make such enquiries, in respect of the objection made under sub-rule (2), as it may deem fit and record a finding thereon from that shown in the return submitted under the provisions of these rules, the order shall state briefly the reasons thereof but failure to state the reason shall not affect the validity of the assessment order.

**26. Payment of tax, penalty and interest under section 43 and Notice of Demand.—** (1) The dues required to be paid under the Act, (except the fees to be paid by means of Court Fee Stamps) shall be paid into a Designated Bank by Challan in Form-24 or by way of a crossed cheque or a crossed demand draft in favour of the Prescribed Authority. In case

of cheque or bank draft, it must be drawn on a local branch of the Bank.

- (2) Challans shall be filled in quadruplicate. Two copies of the challan i.e. original and the duplicate copies duly signed as proof of payment shall be returned to the dealer or the tenderer and the other two copies i.e., the triplicate and the quadruplicate copies shall be retained by the Bank.
- (3) The quadruplicate copy retained by the Bank shall be transmitted to the Prescribed Authority on the day following the day of payment.
- (4) Every Designated Bank shall send the scroll along with the triplicate copies of challans to the concerned Treasury Officer on the 5th day of every month showing therein the amount received in the previous month. The scroll shall contain the challan number and dates, the name of the dealers and the amount paid by each. The Treasury Officer on receipt of the scroll from the bank shall forthwith send an advice list to the Prescribed Authority of the area showing the same details as given in the scroll.
- (5) The amount of tax, interest or penalty or any other sum except when the same is payable by court fees stamps, shall be deposited in the Government Account under the Head of Account "0040-Sales Tax".
- (6) The notice of demand required to be served under section 43 for payment of tax, interest, penalty or other sum shall be in Form-25.
- (7) Every Prescribed Authority shall maintain a Daily Collection Register in Form-26 wherein the particular of every challan received in proof of payment shall be recorded.
- (8) Ever Prescribed Authority shall maintain Demand, Assessment and Collection Register in Form-27 showing the returns filed, assessments framed and payments made under the Act or these rules by each dealer.

**(9)** Notwithstanding anything contained in sub-rule (1), a dealer may make e-payment of dues under the Act through a designated Bank, where the payment of tax, demand or other sum is made through e-payment, the designated bank shall generate e-challan through a computer network. The designated bank shall also forward a statement of such e-challans to the linked Treasury and a copy of such statement shall be forwarded to the Accountant General, Assam. The date of payment for the purpose of these rules shall be the date of deposit generated on the e-challan.

Provided that the Commissioner may, from amongst the registered dealers, who are liable to pay tax, select such dealers on such consideration as he may deem fit and proper, for making e-payment of dues under this Act compulsorily and such dealers shall make e-payments of dues.

*Amendment: the principal Rules, in rule 26, after sub-rule (8), new sub-rule (9) has been inserted vide Notification No. FTX.70/2007/Pt-I/30 Dtd. 21<sup>st</sup> May,*

2009 published in the Assam Gazette Extraordinary No. 153 Dtd. 21<sup>st</sup> May, 2009.

**27. Special mode of recovery.**— For the purposes of section 44, the Prescribed Authority shall serve on the person in Form-28 notifying the person of the requirement to pay the specified amount to the Prescribed Authority.

**28. Manner of Deduction of tax at source and deposit thereof.**— (1) (a) Every person who is required to deduct tax under section 47 *as and when a running bill for any completed portion of works contract becomes due for payment by the contractee* shall, within ten days from the expiry of the month, deposit into a Designated Bank by the appropriate Challan in Form-24 the total amount of so deductible and deducted from one or more dealers during the immediately preceding month.

Amendment : In the principal Rules 28, sub-rule (1) clause (a) the words “*as and when a running bill for any completed portion of works contract becomes due for payment by the contractee*” has been inserted vide notification no.FTX.29/2003/Pt/27 Dtd. 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No.38 Dated 22<sup>nd</sup> February, 2010.

(b) a challan for each deposit in respect of a month shall be filled up in quadruplicate and signed by the person making such deposit.

(c) the challan shall specify the Government Department, undertaking, authority company or corporation with the name and designation of the person making deposit of the amount referred to in sub rule (1) and mention therein in clear detail the name (s), address (es) and Taxpayer Identification Number (s) of the dealer (s) on whose behalf tax (es) is/are paid:

Provided that where the amount payable to the contractor as per the bill, for which such application for no deduction or deduction of tax for a lower amount is applied, is more than rupees five crore the Prescribed Authority shall take prior approval of Deputy Commissioner before issuing such certificate.

Amendment: *In the principal Rules 28, sub-rule (1) clause (c) the proviso has been inserted vide notification no.FTX.29/2003/Pt/27 Dtd. 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No.38 Dated 22<sup>nd</sup> February, 2010.*

(d) The person who deducts or deposits any amounts under sub-rule (1) shall, within seven days from the date of deposit of the amount deducted from the any payment made to a dealer, issue to the dealer concerned, a certificate of tax deducted in Form-29 in duplicate in respect of such deduction and deposit, together with attested photocopy of the challan. The dealer shall furnish



one copy of the certificate and the challan copy for adjustment of such deposit against his dues to the Prescribed Authority.

- (e) In a case where the Drawing and Disbursing Officers is required to submit the bill to the Government treasury, in respect of the supply of goods or execution of works contract or for lease transactions as specified in section 47, he shall enclose four copies of challans with each bill for deposit of the amount so deducted at source. No such bill shall be passed by the Government treasury unless it is accompanied by the four copies of the challan in Form-24. The Government treasury shall keep proper account of deposit of the amount by transfer.
- (f) Two copies of the challan i.e. the original and the duplicate copies duly signed by the officer of the Designated Bank as proof of payment by transfer shall be returned to the tenderer and the other two copies i.e. triplicate and the quadruplicate copies shall be retained by the bank.
- (g) On receipt of the signed original and duplicate copies of the challan from the Bank, the Drawing and the disbursing Officer shall retain the original copy in his office and give the duplicate copy to the concerned party who made the supply or executed the work contract or transferred the right to use any goods.

**Amendment:** In Rule 28 In clause (a) and in clause (e) for the words “Challan in Form 25” has been substituted by “Challan No. 24” vide Notification No. FTX.29/2003/12 Dtd. 8<sup>th</sup> August, 2005 published by Assam Gazette Extra ordinary No. 276 , Dtd. 9<sup>th</sup> August, 2005.

- (2) Grant of Certificate of deduction of tax at source or no deduction of tax.— (a) An application for grant of certificate of deduction of tax at source for a lower amount or the application for no deduction of tax under clause (b) of sub-section (1)of section 47 shall be made by the contractor in Form-30 to the Prescribed Authority who is having jurisdiction over the dealer.
  - (b) The application shall be accompanied by copies of the contract, and other documents, on the basis of which the claim is made for deduction of tax at source for a lower amount or for no deduction of tax, as the case may be.
  - (c) If the particulars and documents furnished by the dealer are correct and complete in all respects and after making such enquiry as may be deemed necessary, the Prescribed Authority is satisfied that the contract involves both transfer of property in goods and labour or service, or involves only labour or service and justifies deduction of tax at source or no deduction of tax, as the case may be, he shall, after giving the applicant a reasonable opportunity of being heard, grant a certificate in Form-31 within a period of one month from the date of receipt of the application and shall forward a copy of such certificate to the contractee for whom the work is executed. If it comes to the notice of the Prescribed Authority that the certificate is wrongly

granted or is not in order, then he may on his own motion cancel or modify such certificate, after giving the dealer a reasonable opportunity of being heard.

- (3) Information to be given to the Prescribed Authority in case of execution of contract.— The information to be furnished to the Prescribed Authority by any person entering into any contract with any contractor for transfer of property in goods shall be in Form-32.
- (4) No deduction of tax or a deduction of tax of a lower amount under sub-section (3) of section 47 shall be made in case of supply of goods where such sale is certified by the Prescribed Authority as being not liable to tax or liable to tax at a lower amount. Such certificate shall invariably be embodied in each bill to be presented for payment:

Provided that no such certificate for no deduction of tax at source shall be given in respect of sale or supply of goods taxable at every point of sale unless the supplier is a dealer registered under the Act having Taxpayer Identification Number and he produces a Challan showing the pre-payment of tax on such sale or supply transaction.

**Amendment:**The provision has been inserted vide Notification No. FTX.29/2003/12 Dtd. 8<sup>th</sup> August, 2005 published by Assam Gazette Extra ordinary No. 276, Dtd. 9<sup>th</sup> August, 2005.

- (5) Tax deduction account number.— (a) Every person responsible for making deduction of tax under section 47 shall apply to the Prescribed Authority for allotment of Sales Tax Deduction Account Number in Form-33 within thirty days time from the date of commencement of these rules, if he was so responsible on such date and within fifteen days from the date of entering into any contract relating to supply of goods or execution of works contract or for transfer of right to use any goods, if he becomes responsible for such deductions after the date of commencement of such rule. A Tax Deduction Account Number shall be issued in Form-34.
- (b) Every person responsible for deduction of tax shall file a return in Form-35 within two months from the end of each year before the Prescribed Authority.
- (c) Every person responsible for issuing certificate in Form-29 shall maintain for each year separate account in Form-36 showing the amount of tax deducted, certificate of tax deduction issued, and the particulars of remittances made to the Government Account.
- (6) No tax under section 47 shall be deducted when the amount paid to any dealer in respect of sales transaction of the nature specified in sub-section (1), (2) or (3) of the said section does not exceed five thousand rupees in a financial year.

**Amendment:** The sub-rule 60 has been inserted vide Notification No. FTX.29/2003/12 Dtd. 8<sup>th</sup> August, 2005 published by Assam Gazette Extraordinary No. 276, Dtd. 9<sup>th</sup> August, 2005.

**29. Refund.—** (1)(a) The application for refund as referred to in sub-section (1) of section 50 shall be made in Form-37 within one hundred and eighty days from the date of assessment or reassessment, as the case may be:

Provided that an application for refund made after the said period may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period.

*Amendment :* In the principal Rule 29, sub-rule (1) clause (a) the words “*of the end of the relevant tax period*” has been substituted by “*from the date of assessment or reassessment, as the case may be*” notification no.FTX.29/2003/Pt/27 Dtd. 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No.38 Dated 22<sup>nd</sup> February, 2010.

- (b) An application for refund shall be signed and verified as in the case of application for registration in case of a registered dealer.
- (c) The Prescribed Authority may reject, any claim for refund if the claim filed appears to involve any mistake apparent on the record or appears to be incorrect or incomplete, based on any information available on the record, after giving the dealer the opportunity to show cause in writing against such rejection.
- (d) When the Prescribed Authority is satisfied that the refund claimed is due he shall record an order sanctioning the refund.
- (e) When the amount to be refunded is more than rupees three lakh the Prescribed Authority shall take prior approval of Deputy Commissioner before sanctioning such refund. The Deputy Commissioner shall not approve the refund if the amount to be refunded exceeds rupees ten lakhs but forward such cases to the Commissioner for approval. Where the amount to be refunded is more than fifty lakhs, the Commissioner shall take prior approval of the Government before sanctioning such refund.

*Amendment: In the principal Rules, in rule 29, in sub-rule (1), the existing clause (e) has been substituted vide Notification No. FTX.70/2007/Pt-I/30 Dtd. 21<sup>st</sup> May, 2009 published in the Assam Gazette Extraordinary No. 153 Dtd. 21<sup>st</sup> May, 2009.*

(Prior to this the clause (e) read as follows:

- (e) *When the amount to be refunded is more than rupees one lakh the Prescribed Authority shall take prior approval of Deputy Commissioner before sanctioning such refund. The Deputy Commissioner shall not approve the refund if the amount to be refunded exceeds rupees three lakhs but forward*

*such cases to the Commissioner for approval. Where the amount to be refunded is more than fifteen lakhs, the Commissioner shall take prior approval of the Government before sanctioning such refund. )*

- (f) When an order for refund is passed refund voucher in Form-38 shall be issued in favour of claimant if he desires payment in cash and advice in Form-39, shall, at the same time be forwarded to the Treasury Officer concerned.
- (g) Where any amount refundable under this sub-rule is not refunded to the dealer within the period of ninety days *of claim of refund made in accordance with the provisions of clause (a) of this sub-rule*, the refund voucher shall include the interest specified under section 52 covering the period following the end of the said period to the day of refund. The authority issuing such order shall simultaneously record an order sanctioning the interest payable, if any, on such refund, specifying therein, the amount of refund, the payment of which was delayed, the period of delay for which such interest is payable and the amount of interest payable by the State Government and shall communicate the same to the Commissioner stating briefly the reasons for the delay in allowing the refund:

Provided that in computing the period of ninety days, the following periods shall be excluded:-

- (i) any delay attributable to the conduct of the person to whom the refund is payable; and
- (ii) the time during which any reasonable inquiry relating to the return or claim was initiated and completed and the time taken for adjustment by the refunding authority of any tax, interest and other amount due.

Amendment : In the principal Rule 29, sub-rule (1) clause (g) the words “*of claim of refund made in accordance with the provisions of clause*” has been inserted by *notification no.FTX.29/2003/Pt/27 Dtd. 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No.38 Dated 22<sup>nd</sup> February, 2010.*

- (h) After the refund is sanctioned if the claimant desires to adjust the amount of refund due to him, the Prescribed Authority shall set off the amount to be refunded or any part thereof against the tax, if any, remaining payable by the claimant or against the future dues.
  - (i) The Prescribed Authority shall enter in a register in Form-40 particulars of all the refunds allowed in pursuance of assessment orders, all applications for refunds and of the order passed thereon.
- (2) Refund of input tax credit carried over for a period of exceeding twenty four months under sub-section (2) of section 50.— (a) Where any excess tax credit for any tax period is carried over for adjustment against the tax due in subsequent tax period or periods and such credit or part thereof remains unadjusted even after a

period of twenty four months from the date of filing the return showing excess input tax credit, the dealer may exercise option for further carry forward of the credit till final adjustment or may claim refund of the amount of such excess credit remaining unadjusted.

(b) A registered dealer making sale of goods in the course of inter-state trade or commerce falling under Section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) shall adjust any excess credit available under the Act against any tax payable under the Central Sales Tax Act, 1956 and thereafter, be eligible to claim a refund of excess credit, only after twenty four continuous credit returns have been filed.

(c) Where a dealer opts for refund of such excess credit, he shall make an application in Form-41 in this behalf within one month from the date of the expiry of the period of twenty four months:

Provided that an application for refund made after the period of one month may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period.

(d) The refund under this sub rule shall be subject to the provisions of clause (c), (d), (e), (f), (g), (h) and (i) of sub rule (1).

**30. Manner of making refund in special circumstances.—** (1) Provisional refund in case of export.— (a) Where a registered dealer claims refund in the return furnished for a tax period on account of the sales made in the course of export out of the territory of India and if the dealer exercises his option for provisional sanction of refund under section 51 pending audit, investigation and assessment, he shall make an application in Form-42 to the Prescribed Authority within thirty days of the filing of such return:

Provided that an application for refund made after thirty days may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period.

The Prescribed Authority shall ordinarily, within thirty days of the receipt of the application, grant refund provisionally, if such dealer furnishes a bank guarantee or other security duly pledged in favour of the Prescribed Authority

The delay attributable to the conduct of the person to whom the refund is payable shall be excluded in computing the period of thirty days.

(b) The Prescribed Authority may pass an order of final refund where provisional refund has been granted after audit and assessment as a result of such audit, if any, is completed and the excess refund allowed, if any, may be recovered as if it is a tax payable under this Act and release the Bank guarantee furnished by the dealer at the time of grant of provisional refund in the manner prescribed:

Provided that the Bank guarantee furnished shall be forfeited if the dealer had preferred an incorrect claim of refund against which payment has been made or fails to produce evidence in support of the claim of refund or the refund claim is reduced by any reason whatsoever and the dealer fails to pay the excess refund allowed, to the extent and manner prescribed.

- (2) Refund in case of export.— (a) Where any dealer claims refund in the return furnished for a tax period on account of sales made in the course of export out of the territory of India, he shall make an application in Form-43 to the jurisdictional Prescribed Authority, within 30 days from the date of furnishing such return:

Provided that an application for refund made after thirty days may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period.

- (b) The application filed under this sub-rule shall be accompanied by tax invoices, copies of the purchase order placed by the foreign buyer with the dealer, the agreement with the foreign buyer, the invoice issued to the foreign purchaser, transport documentation i.e. Bill of Lading, Airway Bill, or a similar document, letter of credit, evidence of payment made by the foreign buyer, the customs clearance certificate, Form 'H' and such other evidences as may be required to establish the claim of refund.

- (c) The Prescribed Authority, on receipt of the application for refund along with the required documents, shall refer the case for tax audit to determine the admissibility or otherwise of the claim of refund. The tax audit shall be completed within one month, as far as practically possible.

- (d) If, on assessment as a result of audit, the claim of refund is found to be correct and is supported by the required evidences, and after receipt of report of such findings, the concerned Prescribed Authority shall sanction the refund claimed within ninety days:

Provided that if the delay in completing the audit under this clause is due to non-cooperation of the dealer or non-production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of such delay shall be excluded while computing the period of limitation as specified above, and such period shall not be reckoned for grant of interest, if any, admissible the Act.

- (3) Refund in case of sales to a unit located in a Special Economic Zone (SEZ) or to an Export Oriented Unit (EOU).— (a) Where any dealer claims refund in the return furnished for a tax period on account of sales made to a unit located in a Special Economic Zone (SEZ) or to an Export Oriented Unit (EOU), he shall make an application in Form-43 to the jurisdictional Prescribed Authority, within 30 days from the date of furnishing such return:

Provided that an application for refund made after thirty days may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period.

(b) The excess input tax credit in any tax period, for which refund is claimed under this sub-rule, shall be carried over to six consecutive tax periods, following that tax period, for adjustment against output tax and the amount found refundable at the end of such tax periods, shall be refunded in accordance with the provisions of clause (c) and (d) of sub rule (2).

(c) The application for refund furnished under clause (a) of this sub-rule shall be accompanied by the copy of the tax invoice, certificate of the competent authority showing the name and address of the dealer and the SEZ, under which it is established and the entitlement of the dealer to purchase goods free of tax covered under such tax invoice and such other evidence, as may be required to establish the claim of refund.