

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES :::: ASSAM :::: KAR BHAWAN
DISPUR, GUWAHATI.

(Circular No. 13/2009)

No. CTS-81/2007/266

Dated Dispur, the 17 June/2009

Sub : Refund of security.

In case of Coal dealers, who sell coal in the course of inter-State trade, as per the present practice, security is realized at the State rate of 4% and movement of coal is allowed by the concerned Superintendent of Taxes through counter signature of challans. At the end of the financial year, the Superintendent of Taxes concerned, on the basis of annual return, audit report submitted by the dealer, statutory forms produced and office records, makes assessment and determines excess security to be refunded. The excess security is refunded as per provisions of the Act and is adjusted by way of counter signature of corresponding number of new challans for next year. It is seen that the amount refunded is substantial. This is primarily because security is realized @4% and in many cases dealers submit 'C' forms or in some cases 'F' forms. As a result the rate of tax comes to 2% or less, as the case may be.

A number of coal traders have been representing from time to time stating that since assessments are done at the end of financial year, huge amounts are blocked as advance security. This adversely affects their business. Similar representations have been given by egg and fish dealers who are depositing security for import of egg and fish under the Assam Entry Tax Act, 2008.

It is seen that many a times the Superintendent of Taxes does not complete assessment proceedings in time. This causes further delay of grant of refund and also leads to uneven collection of tax from year to year.

The procedure of realization of security and counter signature of challans and annual assessment and refund has been in place for past many years.

There have been significant changes in Taxation Laws in last few years. Earlier, one 'C' form was required to cover all transactions of inter-State sale which took place in one financial year between the same two dealers. As a result, assessment could have been done only after end of the financial year. Since 1.10.2005 vide amendment in proviso to Rule-12(1) of the CST (R&T) Rules, 1957, it has been made compulsory to submit one 'C' form to cover transactions of sale for each quarter of a financial year between same two dealers. As per Section 25(9) of the Assam Value Added Tax Act, 2003 read with Rule 14 of the Assam Value Added Tax Rules, 2005, the Prescribed Authority may, on application by a dealer, who has furnished security as required, refund in the prescribed manner any amount of security or part thereof if such security is not required for the purpose for which it was furnished.

In view of the above changes in law and in order to address the difficulties faced by dealers, the following procedure for refund of security is laid :

1. In case of coal dealers or other dealers from whom security is realized for inter-State sale of goods, if dealer submits an application for refund of security or part thereof along with corresponding 'C' forms or 'F' forms for the quarter, then based on the returns submitted by the dealer, statutory forms submitted, the records available in the office regarding number of challans countersigned and other relevant material, the Assistant Commissioner of Taxes/Superintendent of Taxes concerned may determine the tax liability and if the security deposited during the period under consideration is more than the tax payable, he may order refund as per procedure laid down in Rule 14 of Assam Value Added Tax Rules, 2005.

In this connection it may be stated that Govt. vide Notification No. FTX.70/2007/Pt-1/30 dt. 21.5.2009 has raised the limit of refund of security below :

Upto the level of Prescribed Authority – Rs.3 lakh.

Upto the level of Deputy Commissioner of Taxes – Rs. 10 lakh.

This amendment is brought out keeping in mind the annual assessment of a dealer. Hence while processing the refund of security, the Assistant Commissioner of Taxes/Superintendent of Taxes shall have to calculate the power of refund limit accordingly. That is to say as the refund on application would be made quarterly, the limit shall be Rs.75,000/- for a quarter upto the level of Assistant Commissioner of Taxes/Superintendent of Taxes and Rs. 2.5 lakh for each quarter upto the level of Deputy Commissioner of Taxes. The procedure as laid down in Rule 14 of the AVAT Rules, 2005 shall be followed strictly according to quarterly refund limit indicated above.

It will be necessary that the dealers submit monthly return or quarterly return and also submit necessary statutory forms as per claim of concessional rate of tax. In case any dealer submits an application for refund without statutory forms, the Superintendent of Taxes may ask the dealers to submit statutory forms if the dealer has claimed concessional rate of tax in the returns. Such determination of tax liability and order of refund may be done only for a quarter and not period lesser than a quarter at a point of time because the 'C' forms to be considered pertain to a quarter.


2. After refund order as per Rule 14 of Assam Value Added Tax Rules, 2005 is made, corresponding number of challans may be countersigned for the future period.

3. In case of last quarter i.e. quarter ending 31st March of any financial year determination of tax liability may be done only after receipt of annual return and audit report as per Section 62 of Assam Value Added Tax Act, 2003. Hence, the determination of tax liability for last quarter will be done after audit assessment as per Section 36 of the AVAT Act, 2003. In other words, to determine amount to be refunded for last quarter the concerned Superintendent of Taxes will conduct audit assessment for full financial year and take into account amounts refunded in earlier quarters.

If refund has been given for a quarter but not the last quarter, even in such cases audit assessment at the end of financial year shall have to be done compulsorily.

Similarly, in case of dealers importing egg or fish after depositing security under the Assam Entry Tax Act, 2008, security may be dealt in similar manner. For determination of tax liability and refund based on application of the dealer, return has to be filed and other documents must be furnished.

However, it is stated that such determination of tax liability and refund, if any, must be done after taking into account prevailing market price also to prevent tax evasion. The requirement of approval from higher authority as laid down in Rule 14 of the AVAT Rules, 2005 ~~and~~ to be followed strictly.



(Sanjay Lohiya),
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-81/2007/266-A

Dated Dispur, the 17 June/2009

Copy to :-

1. The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Addl. Commissioner of Taxes/Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioners of Taxes (All) for information and necessary action.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information and necessary action.
5. Circular file.


Commissioner of Taxes, Assam,
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