OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
ODISHA, CUTTACK

Letter No 5060  
REV-24/12/2017-REV-CCT

Dt 28/3/18

CIRCULAR

Sub: In the matter of verification of TDS certificates produced by works contractor during assessment

As per Section 54 of the OVAT Act, the deducting authority was required to deduct tax (TDS) at the time of payment made to the contractor and issue a TDS certificate in Form VAT-605. The TDS certificate in Form VAT-605 was to be forwarded to the assessing officer in whose jurisdiction the dealer was registered and also to the contractor. The amount so deducted was to be deposited into Government Treasury and such deposit was to be adjusted by the concerned assessing authority towards the tax liability of the contractor.

It has come to the notice of the undersigned that assessing officers usually send the TDS certificates to the Circles concerned where TDS has been deposited, for PCR verification and give credit of TDS amount only after receipt of PCR verification report from the Circles concerned. This procedure often leads to inordinate delay as necessary verification reports from other Circles do not come in time.

Hon'ble High Court of Orissa, in case of RadhaKrishna Enginnering –vrs- DCST, Balasore Circle in WP(C) No. 10362/2016 Dt. 24.09.2016, has observed that "XXXX the assessee cannot be asked to discharge the duties of an assessing officer and onus shall always be on the assessing officer if suspicion arises on the submission of TDS certificate to seek confirmation thereof if confirmation of the same is required. But in the event the certificate is produced and no question of lack of genuineness of the same is put forward, it is the obligation of the Assessing Officer if required to obtain confirmation thereof. Lack of confirmation of confirmation thereof cannot deny the benefit to the assessee ---- XXX-----we are of the considered opinion that the assessee ought not to be denied the benefit of TDS certificate merely on the ground that the Assessing Officer failed to receive confirmation of such certificate from where such certificate emanated XXXX". Further, the Hon'ble High Court has called upon the Commissioner to issue necessary Circular to all Assessing Officers in this regard. (Copy of the order of the Hon’ble High Court is enclosed)
Therefore, in compliance to the orders of the Hon’ble High Court in the judgement cited above, the following procedure is hereby prescribed for adjustment of the TDS against tax liability of a contractor.

1. The contractor is required to produce only original TDS certificates, before the assessing authority for verification. If the contractor produces duplicate certificates, the assessing officer should request the contractor for production of original TDS certificates failing which his claim of TDS shall be rejected.

2. On production of the original TDS certificate, the assessing officer should verify the genuineness of such certificates. If the deducting authority is of the local area, the genuineness of such certificates can be verified easily since the deducting authority must have submitted a copy in Form VAT 605-A to the Circle Officer and the same can be cross-checked with the TDS certificates produced. If the deduction by the deducting authority has been made through WAMIS, the genuineness of the Certificate can also be verified from the WAMIS portal. For other Certificates, the assessing officer may rely on the forwarding letter of the deducting authority and any other such particulars as he may deem proper to ascertain the genuineness of the TDS certificate.

3. If the assessing officer is satisfied about the genuineness of the TDS certificates, then the assessing officer should give credit of the amount mentioned in the TDS certificates to the works contractor, without waiting for PCR verification of amount shown in the TDS certificate.

4. If the genuineness of the TDS certificates is doubted by the assessing officer, the assessing officer should make correspondence directly with the Deducting Authority to ascertain as to whether the said TDS certificates are genuine or not. After ascertaining the genuineness of the TDS certificates, the assessing officer shall give credit of the amount in the TDS certificate to the works contractor, without waiting for PCR verification of TDS certificate.

5. After adjustment of the TDS amount against the tax liability of the contractor, the assessment order should be passed. If the assessment order gives rise to refund, the competent authority should also sanction the refund subject to adjustment of arrears, if any.
In case of situations listed at Para 2 to 3 above, the assessing officer shall also simultaneously verify whether the TDS amount has been deposited into Government Treasury or not, by the following procedure.

a. As was the earlier practice, confirmation shall be sought for from the Circles where the TDS has been deducted and deposited.

b. The onus on confirmation lies with the Circle where TDS has been deposited. The Circle Officer should confirm PCR verification of deducted TDS amount within 3 months of receipt of the letter from the assessing officer.

c. If it is found that the amount mentioned in the TDS certificates has not been deposited into Government Treasury, necessary action should be taken against the Deducting Authority by the concerned Circle Officer under whose jurisdiction the Deducting Authority is located.

d. If PCR verification of deducted TDS is not received within 3 months, it will be deemed that the TDS has been deposited into Government Treasury and if it is found otherwise later on, the concerned Circle Officer shall be held personally responsible and loss of revenue will be recovered from him.

This guideline will be applicable to all pending assessment cases as well as future assessment cases.

All Circulars issued earlier in the matter of verification of TDS certificates, if any, stand modified to this extent.

[Signature]
Commissioner of Commercial Taxes
Government of Odisha, Cuttack

Memo No 5061/CT,

Dated 28/3/18

Copy forwarded to Addl.CCT's / JCCT's (All Territorial Ranges) and DCCT's/ACCT's (All Circles) for information and necessary action.

[Signature]
Commissioner of Commercial Taxes
Government of Odisha, Cuttack
Memo No. 5062/CT, Dated 28/3/18

Copy forwarded to all Special Commissioners/Additional Commissioners of C.T. Organization, including Additional Commissioner (Appeal), for information and necessary action.

[Signature]
Commissioner of Commercial Taxes
Government of Odisha, Cuttack

Memo No. 5063/CT, Dated 28/3/18

Copy forwarded to JCCT (Appeal) / DCCT (Appeal) of all Ranges for information and necessary action.

[Signature]
Commissioner of Commercial Taxes
Government of Odisha, Cuttack

Memo No. 5064/CT, Dated 28/3/18

Copy to JCCT (Law), CT Head Office, Cuttack for information. He is requested to give a copy of this Circular to the Standing Counsels of CT Organization for information. The Hon’ble High Court may also be apprised of the Circular.

[Signature]
Commissioner of Commercial Taxes
Government of Odisha, Cuttack
IN THE HON'BLE HIGH COURT OF ORISSA: CUTTACK

(ORIGINAL JURISDICTION CASE)

W.P. (C) NO. 10962 OF 2016

CODE NO. 170404

IN THE MATTER OF: An application under Articles 226 & 227 of the Constitution of India;
AND

The Odisha Value Added Tax Act, 2004;
The Odisha Value Added Tax Rules, 2005;
AND

IN THE MATTER OF: An application challenging the validity, propriety, legality and / or maintainability of the order dated 11.05.2016 passed by the Addl. Commissioner of Sales Tax, Odisha, Cuttack in rejecting the statutory appeal summarily on the ground of non-deposit of 20% of the disputed tax amount particularly when the petitioner has submitted the copy of the confirmed TDS amounting to Rs.17,30,430/- before the appellate
authority for consideration where the 20% of the disputed tax comes to Rs.2,33,918/-;

AND

IN THE MATTER OF: An application challenging the authority and jurisdiction of the first appellate authority in rejecting the first appeal summarily without ascribing any justifiable reason for non-consideration of confirmed TDS amounting to Rs.17,30,430/- in respect of deposit of 20% of the disputed tax whereas 20% of the disputed tax is Rs.2,33,918;

AND

IN THE MATTER OF: M/S RADHAKRISHNA ENGINEERING,
At: Ranipatna, Nayabazar, P.O./Dist: Balasore, a proprietorship concern of Sri Ujjwal Kumar Mohanty, aged about 43 years, son of Sri Bipin Bihari Mohanty.

.... Petitioner

-Versus-

1. The Dy. Commissioner of Sales Tax,
Balasore Circle, At/P.O./Dist, Balasore.
2. The Addl. Commissioner of Sales Tax, Odisha, At- Banijaykar Bhawan, Old Secretariat, P.O. Buxi Bazar, City / Dist. Cuttack.

... Opp. Parties
<table>
<thead>
<tr>
<th>Sl. No. of Order</th>
<th>Date of Order</th>
<th>ORDER WITH SIGNATURE</th>
<th>Office note as to action (if any), taken on Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>02.</td>
<td>22.09.2016</td>
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</tbody>
</table>

Heard Mr. Mohanty, learned counsel for the petitioner and Mr. Dalai, learned Addl. Standing counsel for the revenue.

In the present writ application challenge has been made to an order dated 11.5.2016 under Annexure-4 wherein the Addl Commissioner of Sales Tax directed the petitioner to deposit a sum of Rs.2,33,918/- as the condition precedent for entertaining the First Appeal.

In the present case at hand the very peculiar circumstance has come to the notice of the Court which is quoted hereunder:

"Heard the learned Advocate. The authorised advocate submitted that the Ld Assessing Officer has not credited T.D.S. for Rs.17,30,430.00 due to lack of confirmation of the deposit of T.D.S. But the confirmation of the said T.D.S. amount has been communicated from Commercial Tax Officer, Bhubaneswar II Circle, Bhubaneswar to Deputy Commissioner of Commercial Taxes, Balasore Circle, Balasore vide letter no.514 dated 20.1.2015 after the date of assessment i.e. 18.11.2014. The Ld Advocate pleaded that the said confirmation letter regarding credit of TDS amount of Rs.17,30,430.00 should be considered towards proof of deposit of 20% of tax in dispute."

The aforesaid circumstance as noted in the impugned order brings to the notice of the Court the plight of the assessee in the hands of the Assessing Officer, who for the reasons of their own do not have the time or do not get communication of confirmation of TDS certificate produced before them. We call
upon the Commissioner to issue necessary circular to all Assessing Officers clearly indicating that the Assessee cannot be asked to discharge the duties of an Assessing Officer and onus shall always be on the Assessing Officer if suspicion arises on the submission of TDS certificate to seek confirmation thereof if confirmation of the same is required. But in the event the certificate is produced and no question of lack of genuineness of the same is putforward, it is the obligation of the Assessing Officer if required to obtain confirmation thereof. Lack of confirmation thereof cannot deny the benefit to the assessee. In such cases where lack of response is on the part of the Confirming Officer, a system has to be evolved whereby the Assessing Officer can seek confirmation from the office of the Commissioner itself and necessarily a coordinating body at the level of the Commissioner of Sales Tax be constituted for such purpose.

We are of the considered view that the assessee ought not to be denied the benefit of TDS certificate merely on the ground that the Assessing Officer failed to receive confirmation of such certificate from where such certificate emanated.

In the facts of the present case, we are of the considered view that since confirmation has already been obtained under Annexure-3 for TDS amount of Rs.17,30,430/-, the ultimate effect would be effectively a refund of tax and consequently, no question of penalty would arise therefrom.
Therefore, we direct that the appeal be admitted without requiring any pre-deposit and shall be heard and disposed of within a period of six weeks from today.

With the aforesaid observations and directions, the writ application is disposed of.

Urgent certified copy of this order be granted on proper application.

S-11 - S. Mohanty, J.
S-91 - B. Mohanty, J.