

VAT CELL/Roc.No./37188/2011
Circular No.22/2011

O/o. the Principal Secretary/
Commissioner of Comm. Taxes,
Chepauk, Chennai-5.

Dated: 20-10-2011

CIRCULAR

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Sub: TNVAT Act, 2006 – Zero rate sales – Issue of refund – Certain instructions issued for strict compliance – Circular instructions – Issued – Regarding.

Ref:

1. VAT Cell Circular No.007/2006, dated 18.12.2006.
2. This Office Lr. No. VAT Cell/37009/2.007 (VCC No.1060), dated 21.8.2007.
3. VAT Cell Circular No.16/2007, dated 5.9.2007.
4. Lr. No.Q3/30967/2010 (Circular No.17/2010), dated 8.10.2010

Background: -

Despite clear-cut provisions and guidelines governing the issue of refunds at present, it has come to light that there are cases of improper refunds issued to the dealers/ exporters. In the case of export, since there is no VAT payable on the goods exported, the whole of ITC becomes liable to be given back to the exporters as refunds. As a result, in post-VAT scenario, around one lakh refunds claims were already settled involving an amount not less than Rs.1500 crore throughout the State. Out of this, there is considerable quantum of improper refunds. Therefore, abundant caution is required to check such issue of refunds. In the absence of meticulous care in giving refunds, serious abuses may escape detection. Instances have come to light where improper, irregular and incorrect refunds were issued. A few of serious lapses noted as a result of a random check of the Refund files are listed below:-

1. Belated filing of refund claim in violation of Section 18 (3) and Rule 11 (2)
2. No date seal/initial for the receipt of claim to decide admissibility

3. Purchases not relevant to export
4. Excess Input Tax Credit – Refunded
5. Purchases delivered to third parties other than exporters – Refund issued
6. Refund without Input Tax Credit
7. Revision of Export value (due to rejection) not dealt with – Refunded
8. Reversal of Input Tax Credit for wastage not made – Refunded
9. No Input Tax Credit deduction made after issue of refund
10. Details of export not available
11. Ineligible Input Tax Credit claim – Refunded
12. Purchases Disproportionate to Export
13. Refund of Input Tax Credit on closing stock as on 31.12.2006

In view of this, based on the provisions of the Act, in supersession of all earlier Circulars relating to refunds, this Circular is now issued.

This Circular is divided into following parts:-

1. The provisions which governs issue of refund
2. When refunds are eligible
3. Admissibility of refund claims
4. Consolidated refund register
5. Refund Register
6. Related purchase
7. Export documents
8. Rejection or revision of export value
9. Prior sufferance of taxes
10. Input and Output ratio analysis
11. Correctness of levy

12. Deduction of ITC after issue of refund
13. ITC reversal on wastage u/s 19 (9) of the TNVAT Act, 2006
14. Refund of Input Tax Credit on Capital Goods
15. Filing of Declaration
16. Prior Audit of 1st claim of refund by Enforcement Wing
17. Prior approval by DC / JC
18. Written communication
19. Internal Audit
20. Reconciliation of refunds with Banks/Treasury
21. Rectification of refund order

1) Provisions governing the issue of refund:-

A) Refund on Export

Section 2 (44):

“Zero rate sale” means a sale of any goods on which no tax is payable but credit for the input tax related to that sale is admissible.

Section 18:

Zero-rating (1) The following shall be zero-rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed: -

(i) A sale as specified under sub-section (1) or (3) of Section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(ii) Sale of goods to any registered dealer located in Special Economic Zone in the State, if such registered dealer has been authorized to establish such units by the authority specified by the Central Government in this behalf; and

(iii) Sale of goods to International Organisations listed out in the Fifth Schedule.

2. The dealer, who makes zero-rate sale, shall be entitled to refund of input tax paid or payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section (1), subject to such restrictions and conditions as may be prescribed.

3. Where the dealer has not adjusted the input tax credit or has not made a claim for refund within a period of one hundred and eighty days from the date of making zero rate sales such credit shall lapse to Government.

The relevant rule in the TNVAT Rule 2007 is:-

Rule 11(2): -

The dealer who claims refund due to sale effected by him under sub-section (1) of Section 18 shall file an application in Form W to the assessing authority along with copies of invoices or bills of related purchases within one hundred and eighty days from the date of making zero rate sale. The assessing authority after verification of the correctness of the claim, shall issue refund within ninety days from the date of the receipt of the application in Form W.

B) Refund of excess Input tax credit: -

Sub-section (18) of Section 19: -

“The excess input tax credit, if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner prescribed”.

The relevant rules in the TNVAT Rule 2007 are:-

Rule 10 (10) (b):-

“In cases where the input credit as determined by the assessing authority for any registered dealer, for a year, exceeds the tax liability for that year, it may adjust the input tax credit against any arrears of tax or any other amount due from him. If there are no arrears under the Act or after the adjustment there is still an excess of input tax credit, the assessing authority shall serve a notice in **Form P** upon such dealer”.

Rule 11 (1)

The assessing authority shall issue refund of amount specified in Form P within ninety days from the date of service of the said Form, failing which the assessing authority shall also pay the interest at the rate prescribed under the Act along with such refund amount.

2. When refunds are eligible:-

As mentioned above, Rule 11 (1) speaks about the refund of excess ITC found at the end of a financial year in the regular course of business, and Rule 11 (2) speaks about the refund to a special class of dealers namely exporters who need not wait for refund till the end of any financial year. On the other hand, they are entitled to refund of their ITC as and when they effect exports of

goods relatable to their ITC. Hence, refunds to exporters gain more importance than regular refunds notwithstanding that the basic precautions and procedure applicable to refund to exporters are equally relevant to refund to regular dealers.

In respect of refunds to exporters, prima facie, the following are essential to process the claim of refund:-

- i. Application in Form 'W'
- ii. Original tax invoices relating to the claim of input tax in respect of the purchase of goods, depicting the amount of tax paid on purchases made within the State.
- iii. Invoice showing the value & quantity of goods sold in the course of export out of the territory of India
- iv. Self-attested copy of Bill of Lading
- v. Self-attested copy of shipping bill or Export Application duly verified by any Officers of the Customs Department to that effect that the goods have been exported
- vi. Bank Reconciliation Certificate from the concerned bank where payment from the foreign buyer in respect of goods received has been credited

3) Admissibility of refund claims:-

Under sec.18 (3) of the TNVAT Act, 2006, refund claim should be filed within a period of 180 days from the date of export. Any claim filed beyond 180 days from the date of export is invalid. Therefore, to decide admissibility of such claim, date seal must be clearly affixed on the claim and date must be legible.

Mere dated initials of the Assessing Authority or head of Office should be avoided.

From 1.1.2012, all refund claims shall be filed only online. Any refund claims filed manually on or after 1.1.2012 will not be processed. This aspect shall be informed to the trade and industry by proper publicity.

4) Consolidated refund register: -

All the refund applications with the office seal duly affixed on them should be entered in the Distribution Register with the serial number of the day. From the Distribution Register they shall be taken to a consolidated refund register to be maintained for monitoring the refunds issued in the office. The consolidated refund register should contain details such as (1) Sl. No. 2) Current No. 3) Date of receipt 4) TIN 5) Name of the dealer 6) Commodity exported 7) Claim of refund 8) Date of export 9) Period of purchases 10) Date of refund order 11) Amount of refund, 12) Voucher No. and 13) dated initial of the refund issuing authority. The Register should be maintained yearwise and should contain monthwise entries with the following abstract:

Up to the previous month
In the month
Up to this month

5) Refund Register:

In addition to the above register, two refund registers have to be opened by each Assessing Officer called 'Refund Register-I' to watch the cases of Refunds to zero rated sales, "Refund Register-II to watch other refunds. For every Zero rate seller/dealer, a separate folio/page has to be opened. Details of Form P shall be entered in the Refund Register-I & II to watch these cases. Format for these registers is as below:-

REFUND REGISTER-I & II

TIN: _____ YEAR: _____ Name of the

Dealer: _____

Date of receipt of claim	Input tax claimed as refund	Related purchase turnover	Period of purchases	Sales/Export/Zero-rated turnover	Date of export
1	2	3	4	5	6

Amount of refund	Date of despatch of file to DC/JC	Date of receipt of file from DC/JC	Date of order	Refund Vr. No.	Initials of A.O
7	8	9	10	11	12

6) Related purchases under Rule 11(2) of TNVAT Rules 2007

Refund claims in Form W to the Assessing authority are filed along with copy of the invoices or bills of related purchases. To avoid bogus claims, thorough verification of purchases should be made to ensure correctness of the related purchases.

Therefore date of purchase, registered status of the supplier, nature of commodity, quantum of purchase, rate of tax, tax liability, and place of purchase should be verified meticulously. The nature of refund voucher, the reasonable period of time that might be taken from the date of purchase of raw materials, manufacturing, processing, packaging and completion of export procedure till the goods are taken on board for export should be considered to ensure the correctness of purchases pertaining to the actual export.

Therefore, all the Assessing Officers should ensure the relevance of purchases to export in addition to their genuineness and correctness.

7) Export documents:-

There are cases of refunds where documents for exports are false. In some cases, refunds were issued where details of exports are not filed. Foremost documents of export like shipping bill or bill of export, bill of lading and bank reconciliation certificate should be thoroughly verified and occasional counter check with the Customs Department should also be made to ensure the genuineness of export. At least one such cross check should be made in a year for every dealer. In cases of new claim, such counter check with the Customs Department is a prerequisite for issuing refund.

8) Rejection or revision of export value:-

Globally due to fluctuation in trade and change in quality and quantity of goods or rejection of goods exported or for some other reason after the export. reduction in value of the goods exported is very common. In such cases, after meticulous examination of documents, ITC has to be reversed to that extent after giving reasonable opportunity to the dealer. Therefore, modification or revision of export value, if any, at a later date should not be overlooked.

9) Prior sufferance of taxes:-

Refund is nothing but the receipt of amount, which has already been paid into the Government exchequer. Therefore, in all refund claims (including refund claims filed other than by exporters) it is very much essential to ensure the payment of taxes by the suppliers in the respective assessment circle.

Further while checking, it must be ensured that the turnover of sales and the taxes paid by the supplier tally with the claim of ITC of the refund claimant in respect of that supplier.

Therefore atleast in a claim of refund, in which total ITC claim in respect of a supplier is Rs 1,00,000/- and above payment of taxes by such supplier shall be cross checked to ensure sufferance of tax at the earlier stage. The refund issuing authority shall necessarily record his finding the effect of such cross check in the note file for refund. Wherever, any transaction is found not accounted for, instead of sample cross check, 100% of cross check must be done. The refund to the extent of wrong claim of ITC should be reduced by passing appropriate order.

In view of the above instructions, the clarification already issued in the reference 2nd cited is hereby cancelled.

10) Input and output ratio analysis: -

Generally in VAT system input and output ratio analysis should be made in order to ensure that there is no suppression of value addition. And even if there is any suppression of value addition, it must be determined as per the provisions of the Act. Similarly, while processing refund claims, the refund issuing authority should ensure that there are no disproportionate purchases to the actual export by means of inflated purchases.

To ensure this, the input and output ratio analysis should be done and it must be seen that the ratio is reasonable or equivalent to the prevailing trend in the industry in the corresponding period. Input and output analysis and its finding must be accorded in the note file for the issue of refund.

The correctness of the carried forward ITC also should be verified with reference to the month in which it was originally claimed. Adjustment of ITC against output tax and reversal of ITC already made and ITC reversal to be made should be verified to ensure the correctness of related purchases without any omission.

11) Correctness of levy:-

Taxes charged in a tax invoice must be legally correct. Incorrect tax collection, excess tax collection and any collection of tax in contravention of the provisions of the Act by suppliers to exporters are not eligible to be refunded. There are casual cases of refunds of taxes said to have been paid incorrectly on labour charges, silicon wash, washing charges, printing charges, purchase of fabric, fuel, stationery power etc.,

There is an yet another instance in which the verification of entries in the invoices has shown that the goods were already delivered to some third party other than the exporters. Therefore, thorough verification of purchase invoice is a prerequisite to eliminate fraudulent claim.

12) Deduction of ITC after issue of refund:-

International VAT experience shows that there are numerous double claim of refund in many countries. In order to overcome this menace, the Assessing Authority should be vigilant in verification of the ITC carried forward.

Therefore, after the issue of refund, the consequential deduction of input tax credit and updation of the same in the ledger should be carried out without fail. If such updation is not made there will be a chance for yet another claim of refund at a later date and ultimately there is a chance for double claim of refund.

Therefore to avoid such situation, after the issue of refund, immediate deduction of ITC in the ledgers concerned should be made without any omission.

13) ITC reversal on wastage u/s 19(9) of The TNVAT ACT, 2006:-

In a manufacturing concern, wastage of raw materials, finished goods or intermediary products is inevitable. Further, the tax paid on them would have already claimed and availed as ITC at the stage of purchase itself. Therefore, reversal of ITC has to be made to that extent under Sec.19(9) of the TNVAT Act, 2006. If the dealers maintain such accounts, input tax credit can be reversed accordingly on that basis.

In cases where no such account is maintained for wastages, ITC to be reversed has to be estimated based on the sale of waste as per accounts. While making such estimation the sale value of wastage should not be taken for reversal of ITC. On the other hand, the related value of raw material or finished goods or intermediary goods at the time of purchases must be taken into consideration for working out the ITC to be reversed. If no such sale details of wastage is available in the accounts, wastage in all level have to be determined considering the nature of commodity to estimate the ITC on wastage .In some process like yarn manufacturing ITC for invisible loss of cotton also should be estimated.

Therefore, the Assessing Officer and the Refund issuing authority should be cautious in arriving at the quantum of wastage according to the prevailing trend and the resultant ITC due for reversal. Reversal of Input tax credit has to be carefully determined by the Assessing Authorities as mentioned above without any omission. The casual way of looking at things like this should be avoided.

14) Refund on purchase of Capital goods:-

It is brought to the notice of the refund issuing authority that the Accountant General is objecting to issue of refund in respect of ITC on the purchase of capital goods. The Government has been addressed on this issue. Therefore, the refund claim relating to ITC on capital goods may be deferred till such time the decision of the Government is informed.

The Assessing Authority is, therefore, instructed not to process and take a decision in respect of the claim of refund relating to ITC on capital goods. In the refund proceedings, they may add a clause that this portion of claim will be settled at a later date.

In view of the above, to that extent the circular 3rd and 4th cited are modified.

15) Declaration in respect of sales deemed to be in the course of export under Section 5 (3) of the Central Sales Tax Act, 1956

– (1) A dealer who purchases goods from another dealer in circumstances in which the sale to him is to be deemed to be in the course of export under sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) shall furnish to the selling dealer the original and duplicate portions of the certificate in Form H prescribed under the Central Sales Tax (Registration and turnover) Rules, 1957 duly filled in and signed by him or by any responsible person duly authorized by him in this behalf and shall retain the counterfoil.

(2) A dealer who claims that a sale is to be deemed to be in the course of export under sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) shall obtain from the buyer of the certificate specified in sub-rule

(1) and produce before the assessing authority in the manner prescribed under Rule

(3) The supply, use, custody, maintenance of account, validity and due date for submission of the certificate in Form H shall be in accordance with the provisions of the Central Sales Tax (Registration and turnover) Rules 1957 and the Central Sales Tax (Tamil Nadu) Rules, 1957, as the case may be.

In view of the above instructions, Circular 3rd cited is modified to that extent.

16) Prior Audit of 1st claim of refund by Enforcement wing:-

Fake refund claims have surfaced all over the world, wherein the design was an arrangement of a fictitious buyer in other country and shipment of worthless goods by exploiting the weakness in the refund issuing mechanism, which is content with the check of mere documents rather than physical check of goods at the point of export or the factory premises by the authorities concerned.

Therefore, in order to curtail any bogus claim of refund, a joint audit by the officers of the Enforcement Wing and Territorial Wing in the place of business must be done on every first claim of a dealer (including refund claims filed other than exporters also) irrespective of the quantum of refund. Therefore, on receipt of the first claim, the same should be forwarded by the Assessing Authority/ Head of Office to the Enforcement wing within a week. On receipt the same, the Deputy Commissioner/Assistant Commissioner of Enforcement concerned as the case may be, should organize and complete audit within 15 days by proper authorization of the Joint Commissioner Enforcement concerned. The audit should confine to the physical verification of the correctness of

declaration made in refund claim pertaining to the nature of raw materials, intermediary goods, finished goods, and consumables.

In addition to the above, at the time of audit, original purchase invoices of the purchases relevant to export and the correctness of the details such as quantity, value and nature goods with reference to the refund claim and entries made in the accounts maintained by the dealer should be verified. Audit should be completed within a day. If a dealer is not co-operating for audit or factory premises found locked continuously in such cases report should be sent to reject such claim after an enquiry. After completion of audit, the report should be sent to the Assessing Authority within a week.

17) Prior approval by DC / JC:-

On receipt of the claims (including refund claims filed other than by exporters) involving rupees One lakh and above should be submitted to the Deputy Commissioner (CT) concerned and claims involving rupees 5 lakhs and above shall be submitted to the Joint Commissioner(Territorial) concerned for approval for issue of refund.

The Deputy Commissioner / Joint Commissioner should examine claims and audit reports thoroughly and should send their letter of approval or otherwise to the Assessing Authority within a week. Further, the Joint Commissioner/ Deputy Commissioner should monitor issue of refunds by the refund issuing authority within the stipulated time of 90 days.

The Territorial Deputy Commissioners/Territorial Joint Commissioners have to maintain a Refund Register-III in the following format:

REFUND REGISTER-III

Sl. No.	Name of the Circle	Name of the claimant	TIN	Amount of refund claim	Date of receipt of file	Date of dispatch of file along with remarks	Initials of DC/JC
1	2	3	4	5	6	7	8

18) Written communication: -

If claims filed have any defects, the dealer should be asked to submit necessary information/evidences required to process refund claim. This communication should invariably be made in writing and the dealer should be made aware that his claim of refund cannot be processed unless he submits the information required by the Assessing Officer.

19) Internal audit:-

All refund claims (including refund claims filed other than exporters also), irrespective of the amount of refund shall be audited by the Assistant Commissioner (Audit) as per schedule. If the posts are vacant, the Deputy Commissioner concerned should make alternative arrangements by deploying some other officers to complete the audit of settled refund claims. If sufficient hands are not available, Deputy Commissioner may request Joint Commissioner (Territorial) concerned to depute Officers from other Zones or even from other divisions by referring the matters to Commissioner of Commercial Taxes through Joint Commissioners. It should be ensured that the internal audit party audits all the settled refund claims within the period of three months from the date of issue of refunds.

This has to be monitored by Deputy Commissioner/ Joint Commissioner periodically by conducting quarterly review meeting of Assistant Commissioners (Audit) by Joint Commissioner in the presence of concerned Deputy Commissioners and minutes of the meetings should be communicated submitting a copy to this office without fail.

20) Reconciliation of refunds with Banks/ Treasury: -

It is necessary to carry out specific periodic reconciliation of the refund advices issued by the various officers and payments recorded in the Bank/District Level Treasury. For this purpose, the periodicity of reconciliation should be three calendar months; the payment details of circles, banks and District level treasuries should be examined together. Cases of over payment, if any, should be immediately investigated. Deputy Commissioner should monitor this work without fail.

21) Rectification of refund order: -

If as a result of audit / inspection it has come to notice that excess refund has been granted to any dealer, then the refund issuing authority should immediately initiate and pass an order and the demand so raised shall be deducted from subsequent refund payable to the dealer. If no refund is payable subsequently, it shall be recovered as per provisions of the TNVAT Act, 2006.

While making rectification, neither in notice, nor in the proceedings this Circular should be cited, instead, relevant provisions should be cited wherever necessary.

This Circular should not be taken as an impediment or an exhaustive one on the issue of refunds. Instead, it intends to clarify focusing certain aspects to facilitate issue of proper refund. The refund issuing authority may process issue

of refunds by calling for any evidence depending upon the nature of trade and industry in consonance with the provisions of the Act with due process of Law. Further, while processing the refund claim any portion of this Circular should not be cited in the notice or proceedings.

The receipt of this Circular shall be acknowledged by next mail.

Sd/- Hemant Kumar Sinha,
Principal Secretary/
Commissioner of Commercial Taxes

To

1. All the Joint Commissioners (CT) (Territorial including LTU, Enforcement, ISIC & MoU Cell)
2. All Deputy Commissioners (Territorial, Enforcement & MoU Cell)
3. All the Head of the Assessment Circles

Copy to:

1. All the Additional Commissioners in the O/o. the Principal Secretary/ Commissioner of Commercial Taxes, Chepauk, Chennai-5.
2. Joint Commissioner (Admn.), O/o. the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5.
3. All Joint Commissioners (CT), Deputy Commissioners (CT) & Assistant Commissioners (CT) in the O/o. the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5.
4. The Joint Commissioner (Computer Systems), Chennai-6 for uploading in the intranet and internet websites.
5. The Director, Commercial Taxes Staff Training Institute, Chennai-6.

Stock File / Spare

//Forwarded/by order//


20.10.2011
Additional Commissioner (VAT)