

COMMERCIAL TAXES DEPARTMENT

From

Thiru T. Jacob, I.A.S.,
Principal Secretary /
Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

To

All Joint Commissioners (CT)
(Territorial)

Lr. No. Drafting Cell-I/23465/2002, dt. 19.12.2008

Sir,

Sub : Tamil Nadu Sales Tax (Settlement of arrears) Act (Act 60/2008) – Certain queries raised by the Joint Commissioners – Reply sent – Regarding.

Ref : Tamil Nadu Sales Tax (Settlement of arrears) Act (Act 60/2008)

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With reference to queries raised by the Joint Commissioners, the following clarifications are issued for guidance.

Query-1

When an assessing officer after check of accounts passed an assessment order levying tax at higher rate for non filing of declaration forms/filing defective declaration forms in excess of tax due / paid as per monthly returns filed by the dealer, whether the resultant demand has to be treated as the one raised due to enhancement or one as per the returns?

Reply

Section 7 (b) of the Tamil Nadu Sales Tax (Settlement of arrears) Act uses the expression, ".....arrears of tax which was in excess of tax admitted as per the return...." It is not "tax on turnover admitted". Hence arrears relating to non filing of declaration forms is also eligible for this scheme.

Query-2

Regarding appeal, the condition is that no appeal or revision is pending before any court on the date of filing application. In this regard, the Supreme Court has held in number of cases that the admission of a case under Art.226 is not an appeal. Such being the case, if a dealer has filed WP in the High Court, is it necessary to withdraw the case? After STAT, if the dealer prefers appeal before High Court, it is admitted before a bench only. Only cases Art.226 is admitted before single judge, wherein question of law is involved. Is it necessary to withdraw even such cases? Or will this condition cover even such cases, I am of the opinion that the condition cannot be applicable to writ cases under Art.226 of 32.

Reply

It has been clearly stated in Section 4 of the Act 60 of 2008, that the cases where appeal or revision **against the order of Assessment** is filed before High Court or Supreme Court and kept pending, they are not eligible for filing application. Further, if such appeal or revision filed before the High Court or Supreme Court is pending and though an application is filed for withdrawing the appeal or revision, till an order is passed by the Court concerned, the application under this scheme cannot be entertained. If the Writ petition filed by the dealers is pending, the application cannot be entertained as it becomes subjudice and the writ jurisdiction cannot be curtailed by any law.

Query-3

As per Sec.5(3), a copy has to be sent to the AO or appellate authority or revisional authority. As per Sec.4, no appeal should be pending before any court or revisional authority. So, if an applicant wants to apply, he has to necessarily withdraw his case and should apply under this scheme. Such being the case why a copy should be sent to them. Is it necessary?

Reply

In this connection, the Govt. have clarified that, Court means High Court or Supreme Court. Therefore, it has been decided that, the dealers who are in arrears prior to 1.4.2002 who have filed appeal or revision petition before AAC/STAT or Deputy Commissioner (Territorial) respectively, can avail this opportunity. If the application filed by the dealers in this scheme is rejected, they can go ahead with reference to appeal / revision petition filed by them. Therefore sending a copy of reference / order to the concerned appellate or revisional authority becomes necessary.

Query-4

Regarding payment of tax in favour of Designated Authority, clarification has been sought for.

Reply:

It has been requested by the Government to issue necessary detailed guidelines / instructions for smooth implementation of the scheme. Therefore, it is informed that necessary instructions may be issued to the Assessing Officers to request the dealers to pay the amount in favour of Assessing Officers.

Query-5

Section 7 details the rates applicable in determining the amount payable. As per this section, "interest is to be calculated at six percent per annum on the arrear of tax". This means the interest has to be calculated on the entire arrears of tax and not on the amount payable as per the conditions. If the intention of the Government is to calculate the arrears only on the amount to be paid, the wordings need to be changed, as the present constructions a misleading one.

Reply:

In this connection, it is informed that at the time of demand for grants to the Commercial Taxes Department, for the year 2008-2009 in the Assembly, the Hon'ble Minister for Commercial Taxes has announced to levy interest on the amount payable. Hence, the intention of the Government is to levy interest on the amount payable. Further, interest is leviable only on the amount paid and not on the amount payable. Accordingly, the FAQ was prepared and sent. The intention of the Government is to reduce the arrear position and the burden of the dealers as well.

sd/- **T. JACOB,**
Principal Secretary /
Commissioner of Commercial Taxes

Forwarded / By order

Commercial Tax Officer.