

No. C1/520/06/CT

Office of the Commissioner,
Department of Commercial Taxes,
Thiruvananthapuram
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CIRCULAR No 1/2007

Sub:- KVAT Act, 2003- Proper administration of the Act-
further instructions – issued.

Section 25 of the KVAT Act, 2003 provides for assessment of escaped turnover for any reason specified therein. Now a doubt has been raised from some quarters as to whether the re-opening of the assessment is to be made on a yearly basis or on 'return period' basis in view of the wordings of the said section.

The section reads as "*Where for any reason the whole or part of the turnover of business of a dealer has escaped assessment to tax in any year or.....*" Here the language has to be interpreted with respect to the given set of circumstances. Under KVAT Act, 2003 there is only monthly or quarterly assessment, as the case may be, other than those assessments done after the expiry of the year as specified in Rule 39(4) of KVAT Rules, 2005. So basically the assessments have to be done on 'return period basis', which may be either, be on monthly or quarterly basis, as the case may be.

Normally the escape of turnover to assessment, if any, will relate to the respective return periods and the revenue loss due to such escape has to be made good by invoking section 25 immediately on detection. So section 25 has to be construed with reference to the given set of circumstances and the provision has to be invoked on the 'return period' basis invariably, and on annual basis, if circumstances so demand following such procedures.

Further, instructions have already been issued to forward assessment records to Audit Assessment Wing for action at their end and criteria were fixed therefore. But it is brought to the notice of the Commissionerate that while forwarding the monthly or quarterly assessment records, as the case may be,

to the Audit Assessment Wing, the assessing authorities are not furnishing the credit particulars of the payments made by such assesseees for the respective periods. Obviously this causes difficulties in finalizing the proceedings by the Audit Assessment Wing.

Therefore the assessing authorities shall ensure that the files forwarded to the Audit Assessment Wing shall carry the proof of credit of the payments made by the assessee in the form of challans. In case any challans are not available; a certificate of credit shall be furnished by the assessing authority.

In the cases of assessment finalized by the Audit Assessment Wing, the respective orders with demand notice shall be served on the assessee as per rules by the Audit Assessment Wing and the assessment records shall be returned to the concerned assessing authorities thereafter within fifteen days from the date of service of the demand notice. On receipt of such records the assessing authorities shall enter the demand in the demand created register of the respective officer/office. Collection of said demand shall also be monitored by the assessing authorities including coercive action.

In case an assessment order is modified or remanded in appeal, the same shall be attended to by the Audit Assessment Wing and collection in the file shall be pursued by the assessing authority. So also, where there is an error apparent on the face of the record, the rectification shall be carried out by the Audit Assessment Wing.

In view of the foregoing, Deputy Commissioner (Appeals) shall mark copy of the appellate order to the Audit Assessment Wing in addition to the assessment authority.

The Deputy Commissioner (Appeals) shall also mark a copy of the appellate order to the concerned District Deputy Commissioner since the recovery measures are monitored by him.

Similarly, Deputy Commissioner (Audit Assessment) will be the authority to file second appeal against the orders of the Deputy Commissioner (Appeal) where necessary.

Section 20 of the KVAT Act specifies the periodicity for filing of returns. Sub rule (4A) to rule 22 of the KVAT Rules, 2005 further provides for filing revised return within two months from the last day of the return period to which the return relates, where a dealer detects any omission or mistake in the return submitted him. In all other cases fresh returns or revised returns can be filed only in pursuance to a proceedings initiated under the Act and shall be accompanied by such penalty or settlement fee as the case may be, as provided under the Act.

But it has been brought to the notice that some assessing authorities are accepting revised returns filed by assesses according to their convenience, in violation of the provisions of the Act. Cases of accepting revised returns filed by assesses against whom statutory proceedings are initiated by the Audit Assessment Wing are also brought to notice. Accepting such returns may defeat the proceedings initiated by the Audit Assessment Wing and may have negative impact on revenue.

So all assessing authorities shall ensure that no revised returns are accepted by them which are filed in violation of the provisions of the Act and beyond the time limit prescribed for filing such returns.

All officers shall ensure that the above instructions are strictly complied with.

Commissioner.