

Circular No. 29/ 2015
D3/22678/ 2015

Office of the Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai – 5.

Dated: 11.08.2015

Circular

Sub: TNVAT Act, 2006 – Undue enrichment of input tax credit - Section 19(20) inserted to reverse such excess ITC – Certain instructions issued - Reg.

Ref.: 1. Principal Secretary/ Commissioner of Commercial Taxes in D3/ 44968/ 2009 - Circular No. 1/ 2009 dated 30.11.2009.

2. Commissioner of Commercial Taxes in Lr. No. BD3/ 44728/ 2010 dated 04.11.2013.

1. In the reference first cited, the discounts received occurring as profit in the Profit and Loss Account was instructed to be construed as value addition and subject to tax at appropriate rates applicable to the goods.
2. In this connection, certain traders' associations have represented that assessing officers of the department, relying on the said circular are treating discounts/ incentives received post purchase as sales turnover and taxing them at appropriate tax rates thereby, treating such indirect income wherein there is no question of transfer of property of goods is incorrect. The circular first cited issued in order to curb the undue enrichment owing to input tax credit in excess of output tax and non-payment of value added tax by certain line of dealers by assessing discounts and incentives, was issued before insertion of section 19(20) and therefore stands withdrawn.
3. Various relevant sections of the TNVAT Act are reproduced below for clarity:
 - a. Section 2(41) - Explanation II: "any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover. The turnover as defined in Clause (ii) of Explanation II to Section 2(41) of TN VAT Act clearly excludes discount in computation of turnover."

- b. Rule 10(6)(b)(ii)(c): "Wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the price in the original tax invoice, so as to retain the quantum of input tax credit already claimed by the buying dealers as well as not to disturb the tax already paid by the selling dealer".
- c. Section 19(20): "Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."
4. In the reference second cited, it has already been informed that for operation of section 19(20), the following three steps need to be followed:
- (i) Identification of cases in which huge ITC is accumulated on account of sale price being lower than the purchase price.
 - (ii) The above facts have to be ensured by verifying the purchase and sale price per unit.
 - (iii) If the above two are detected in a given return, the quantum of ITC which exceeds the output tax shall be reversed.
- Further, section 19(20) has nothing to do with levy of tax on the discount which has to be dealt with independently as per the provisions of the act and circumstances of each case.
5. In order to give effect for reversal of undue enrichment of ITC, section 19(20) should be given effect by correlating the sale price of goods with the corresponding purchase price. If the sale price is lesser than the purchase price, then the amount of ITC in excess of output tax should be reversed.
6. Where required, the assessing authorities may verify a random sample of sale invoices and corresponding purchase invoices for certain period, i.e. for a week, month, quarter depending upon the size of business. If the random verification revealed that the dealer has sold goods lesser than the purchase value, a thorough scrutiny for the whole year shall be made and based on which reversal of the ITC and tax payable be determined under the appropriate provisions of the TNVAT Act.
7. Form WW with financial statements of accounts viz., trading account, profit and loss account and balance sheet with schedules duly audited

and certified by Chartered Accountants filed for the given period may be called for to identify the quantum of undue enrichment of input tax credit.

8. Provisions of section 19(20) will extend only to reversal of excess ITC. In order to tackle evasion of taxes, if there is a case of selling at a price abnormally below prevailing market price, the provisions of section 24 of the act have to be invoked by the assessing authorities taking into account concrete evidence available to such effect. Invoking of section 19(20) is not sufficient.
9. These instructions may be scrupulously followed in addition to the circulars/ instructions issued in earlier instances on return scrutiny; quoting of these instructions in the notices and orders should be strictly avoided.
10. The receipt of this reference may be acknowledged at once.

Sd/- K. Rajaraman,
Principal Secretary/
Commissioner of Commercial Taxes

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All Enforcement Joint Commissioners (CT)
The Joint Commissioner (CS), Chennai – for uploading in intranet and internet website.

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The Director, Commercial Taxes Staff training institute, Chennai

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13/08/15
Deputy Commissioner (Audit)