



24th June, 2021/7385

ગુજરાત વેપારી મહામંડળ

વહીવટી કાર્યરત

Shri J. P. Gupta

Chief Commissioner of State Tax,
Gujarat State,
Rajya Kar Bhawan, Ashram Road
Ahmedabad-380009

Dear Sir,

Greetings from Gujarat Chamber of Commerce and Industry.

We have received representation from our members regarding difficulties faced by them in day-to-day business. While all businesses are struggling after the onslaught of Covid Pandemic, we feel that sympathetic consideration is required to redress these grievances. We therefore request you sir, to do the needful at the earliest. The grievances are as under:

HARSH RECOVERY PROCEEDINGS

1. In view of the recent intensive drive undertaken by the department for the recovery of dues under the Vat Act as per the records of the department, the trade and industry has passed through agonizing period. We are aware that you have positively responded to the grievances raised against harsh recovery proceedings undertaken by the department. However, we are given to understand that liberal approach is directed to be adopted only for orders passed on or after 31.12.2020. In our humble submission there is wide spread irregularities in the recovery proceedings undertaken by the department for the alleged dues relating to the period commencing from 1.4.2006. Therefore, it is very much necessary to keep these proceedings in abeyance till corrective actions are taken. A public clarification to this effect will help in reducing the grievances and tension of the dealers and easing out the problem created by unmindful implementation of the departmental instructions by the authorities.
2. **We would like to point out certain aspects in this regard for which corrective actions may please be taken at the earliest:**
 - (a) The records of the department are not updated and therefore inspite of the fact that legally dues are not outstanding harsh recovery actions including bank attachments are done. In many cases, the challans evidencing deposit of money by dealers are with

Natubhai Patel
President

Hemant N. Shah
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Sachin K. Patel
Hon. Treasurer



the concerned clerks who have not updated the record. Dealers have also either paid full dues or taken benefit of Amnesty Scheme. Yet credit of such payment or remission is not given and recovery proceedings are undertaken. Strict instructions are therefore required to be issued for updating the records of the department before initiating any recovery proceedings.

- (b) In many towns and cities the orders are actually served by the clerks. Practically therefore what has happened is that while the records of the department shows service of orders to dealers actually they are not even served. This anomaly requires rectification at the end of department.
- (c) Many orders were sent through RPAD. However, in view of the Covid Pandemic if the business place of the dealer at the relevant time was closed, the orders have not been actually served. Therefore, without service of order recovery proceedings are illegal.
- (d) Even in cases where based on notices received dealer attempt to submit the proof relating to payment or stay of appellate authority often it is experienced that the office of the jurisdictional officer refuses to accept such proofs on the ground that there is no such outstanding demand as per their record. This shows the lack of co-ordination amongst various divisions of the department.
- (e) Rectification applications filed by dealers remain unattended for a long time. In such cases dealers suffer as dues may be outstanding because of certain apparent mistakes. The rectification applications are therefore required to be decided before recovery actions are taken.
- (f) When appeals along with stay applications against recovery are pending for adjudication, recovery proceedings cannot be undertaken as per the settled law. However, this established law is not followed. Strict instructions are therefore required to be issued that when stay applications are pending for adjudication before appellate authority recovery proceedings should not be initiated.
- (g) In first appeals, the stay orders issued are operative for short period of time. This is unnecessarily creating problems for getting extension of stay orders earlier issued. As a policy, stay orders should be issued till disposal of first appeals.
- (h) Even though copies of stay orders issued by the appellate authority are submitted to the office of the jurisdictional officer, they are ignored and recovery proceedings are undertaken.
- (i) Sometimes when reassessment order is passed, the recovery proceedings are initiated for the combined dues of the assessment order as well as the reassessment order. This is plainly bad and requires necessary rectification in the records of the department.

- (j) As per Vat Rules, excess input tax credit under the Vat Act can be adjusted towards the dues under the Central Act. Many dealers have made such adjustment at the time of filing returns. In many cases assessment orders have been passed only under the Central Act. As a result, the amount of input tax credit under the Vat Act which was adjusted towards dues under the Central Act while filing returns, remain as dues under the Central Act. This is absolutely contrary to the express provisions of law. Therefore, in such cases there is a need for passing assessment order under the Vat Act and make necessary adjustment of excess input tax credit towards the dues under the Central Act. This would stop unnecessary harassment of genuine dealers.

REFUND TO DEALERS

3. In view of the Covid Pandemic all the businesses have been badly affected. There is acute financial crunch and dealers are in need of liquidity to maintain their businesses. In these circumstances withholding refunds of the dealers is not in the interest of the trade and industry of the State and therefore immediate steps are required for granting refund. In this regard following may be taken in to consideration:
- (a) While on one hand, department is pressing very hard for the recovery of dues, on the other hand the genuine and regular dealers entitled to refund as per their returns are deprived of the refund as their assessments are not taken up. We are given to understand that in cases where the refund claim as per returns under the Vat Act was less than Rs. 1 lakh, even the task for assessments have not been generated. In fact these are the dealers who really deserve more financial support because the Covid Pandemic has drastically affected the very survival of small businesses. Therefore, drive should be taken up for taking up assessments and granting refund in such cases at the earliest.
 - (b) Refund claim for the quarter of 1.4.2017 to 30.6.2017 is not processed at all. Thus, the refund of the last period under Vat Act remains unattended.
 - (c) Rs. 25,000 paid by way of deposit for taking registration under the Vat Act is required to be refunded at the earliest.
 - (d) The National Saving Certificates and other securities given for taking registration under the Vat Act are also not returned in many cases. This is required to be given back to the dealers at the earliest.



- (e) The files going to the G R Cell as per the departmental procedure is taking unduly long time resulting in to denying refund to the dealers for a very long time. Some time frame is required to be fixed in order to ensure that undue delay does not occur in such proceedings.
- (f) Under the GST Act admittedly time limit of 2 years is fixed for claiming refunds. However due to Covid Pandemic many dealers could not file their applications for refund in time. At the same time, Hon. Supreme Court has in Miscellaneous Application No.665/2021 in SMW(C) 3/2020 by an order dated 27.4.2021 in continuation its earlier order dated 8.3.2021 directed that the period(s) of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not shall stand extended till further orders. Therefore, the applications for refund filed by the dealers need not be rejected on the ground of limitation where the delay is because of the Covid Pandemic. We may point out that this problem is faced with the State GST department only.
- We would also request that the departmental authorities may please be informed about this order of Hon. Supreme Court so that it is followed in all the proceedings and issues of limitations due to Covid Pandemic are not raised in any proceedings.
- (g) Though the law provides for granting refund within 30 days of the application filed by the registered person, it is observed that unless follow up actions are taken by the applicant refund is hardly given within time.

APPEALS

4. When dealers are aggrieved by the orders of lower authority, appeal is preferred before the superior authority. However, the working of this wing of the department is also not satisfactory. The following grievances received needs to be redressed at the earliest:
- (a) Binding decisions of Hon. Gujarat High Court and Supreme Court are ignored. Often an excuse is expressed that instructions have not been received for following a particular decision. This shows that appellate authorities and for that matter even the lower authorities require direction from the superior authority for following binding decisions of Courts. This is very unfortunate and needs to be rectified by giving clear and public direction about following judgments of Courts and Tribunal.

- (b) At present the hearing of the first appeals under the Vat Act and the GST Acts are not taken up and even for conducting appeals dealers have to pursue rigorously with the first appellate authority. Strict instructions are therefore required for finalizing first appeals pending for adjudication before the first appellate authorities.

EXTENSION OF AMNESTY SCHEME

5. The Government of Gujarat had implemented the Amnesty Scheme for the settlement of past cases. In this regard we had by our letter dated 19.6.2021 addressed to Hon. Deputy Chief Minister Mr. Nitinbhai Patel, requested for the extension of Amnesty Scheme. Copy of this letter is attached herewith. It is requested that favourable response may please be given to this representation.
6. We have also received complaints that many dealers who had applied for the Amnesty Scheme have not received orders in respect of the application so filed by them. Instructions are therefore required to be issued for passing necessary orders in this regard at the earliest.

REGISTRATION UNDER GST

7. Persons require registration under the GST Acts either voluntarily or compulsorily. In the implementation of the GST Acts we have noticed that dealers are facing problems at the stage of getting registration certificates under the GST Acts itself. Different Officers implement the registration provisions differently and there is lack of uniformity in this regard. Therefore, our humble suggestion is that a public circular may please be issued regarding requirements for obtaining registration certificate under the GST Acts and the procedure required to be complied with either for granting or amending the registration certificates. This will bring uniformity and avoid hurdles in getting registration certificate under the GST Acts in time. The following practical difficulties may also be taken in to consideration:
- (a) Even in cases where the application for registration under GST is linked with PAN and Adhar Card and no defect is noticed, the registration certificate is not given within the statutory time limit.
- (b) Where spot visit is required for granting registration, the concerned officers are not responding in time and dealers have to make all arrangements for the visit of the learned Officers. Such procedure is required to be completed within the prescribed time limit.



- (c) In most of the cases deficiency memos are wrongly issued in order to circumvent the period of limitation. If there are genuine defects in the application there cannot be any objection in demand for rectifying the defects. But raising deficiency memos only with a view to delay the granting of registration is objected.
- (d) Applications filed for amendment in registration certificates such as incorporation of additional place of business, change in address, change in bank accounts etc. are not done for a long time. Even unnecessary evidences are wrongly demanded for making such amendments. This needs attention and immediate action from the concerned officers.

MOBILE CHECK POST PROCEEDINGS

8. We strongly condemn any attempt towards evasion of tax. However proceedings by the Check Post Officers leading to unnecessary harassments to honest dealers and corruption is equally required to be deprecated. In this regard following may please be considered
- (a) There is a need to give contact numbers of the mobile check post officers on the website of the department so that it becomes easy for the dealers to contact them in case their vehicles are detained by them.
- (b) Recently it is observed that even though no illegality is noticed in the goods under transport on the alleged ground that the vendors had on their earlier transactions committed some illegality the vehicles are detained. This is contrary to the express provisions of law and hence required to be stopped forthwith.
- (c) It is observed that objection to proceedings under section 129 of the GST Acts are ignored and provisions of section 130 are invoked ignoring the directions of Hon. Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. v/s State of Gujarat 76 GSTR 81 (Guj.). This judgment is required to be followed in order to avoid unnecessary harassments of dealers.
- (d) Unnecessary harassments by the Check Post Officers are required to be curbed with iron hand. When the goods under transport are supported by valid E-way Bill as well as invoice under one pretext or the other dealers and transporters are facing immense harassments. There is a need to take effective steps to prevent corruption which is rampant in regard to the Check Post proceedings.



PROVISIONAL ATTACHMENT

9. Hon. Supreme Court of India has recently in the case of Radha Krishan Industries v/s State of Himachal Pradesh and Others 88 GSTR 228 (S.C.) explained the scope of the provisions of section 83 of the GST Acts for provisional attachment including bank attachment. This decision is required to be followed in letter and spirit. Necessary instructions are required to be given in this regard.

ADVANCE RULINGS AND APPELLATE PROCEEDINGS UNDER GST

10. Provisions relating to advance ruling are incorporated in the GST Acts with an avowed object of guiding persons in advance about their liability under the GST Acts. While we have observed that neutrality in giving such decisions is widely lacking even the process of hearing of Advance Ruling and appeal thereto is also very slow. As a result the very purpose of incorporating such benevolent provisions is frustrated. There is a need to speed up the process of these hearings and also to generate faith of people in these proceedings by maintaining impartiality and issuing orders without any bias in favour to the revenue.

ACCOUNTABILITY OF OFFICERS

11. We believe that time has now come to fix accountability of Officers. In case of errant Officer strict action needs to be taken with a view to ensure that everybody realizes that no one is above law. An officer is not authorised to harass dealers merely because he or she is enjoying a particular position. Discipline is required in this regard and necessary instructions may please be conveyed in this regard. This must be followed by actual practice of taking harsh actions when any officer is found to be taking law in his hand.

MEETING

12. We would like to personally meet you and appraised you about our grievances. Kindly let us know the time and place where we can meet and jointly try to resolve the problems of trade and industry at the earliest.

Thanking you,

Yours sincerely,

Natubhai Patel
President