

Date: 14.09.20
FIA: 152

Chandrakant M. Parekh
President

To,
The Commissioner-VAT,
Dist-DNH, UT of DNH and DD,
Daman.

Subject: Refund of VAT

Rajan Aggarwal
Vice President

Sir,

Since the onset of Covid-19 Pandemic in March 2020 in India in general and later in the UT of D & NH, the Administration took effective steps to control the menace. The Trade and Industry worked shoulder to shoulder in the endeavour to curb the pandemic.

Fiscal 2019-20 was not an encouraging one, economic slowdown and other issues created dent in the financial health of Industries. Fiscal 2020-21 begin with grim note of Pandemic to make suffer Industries loss of production and Sales ultimately resulting in to huge economical set back. Sudden lockdown not only make to suffer production but financial cycle as well.

K.T. Parmar
General Secretary

Beginning of the June 2020, the Government has opened up lockdown and industrial activities has restarted but, it is next to impossible for Industry to work to its capacity in absence of Working Capital. Industries require to create a pool of working Capital by tapping all available resources. One such resource is Pending Refund with VAT Department.

Under the circumstances, we expect that Refund be expedite but the process of Refund under VAT has slowed down considerably since, D & NH VAT Department

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adopted procedure of 100% verification on TINXSYS of Physically surrendered Statutory forms (Like C-F-H-I-E1) of the year for which Refund is Pending.

Chandrakant M. Parekh
President

Further the situation is more worsen as Department started serving orders of huge demand on account of non-verified forms on TINXSYS for earlier years, the assessment of which years were completed long back.

Rajan Aggarwal
Vice President

Most of the dealers are already assessed up to 2015-16 and dealers have surrendered Statutory forms received till the time of assessment with the Assessing Authority. Surrendered Statutory forms were accepted and accordingly assessments were completed. Dealers paid tax and Interest Demand, if any created by such Assessment orders.

K.T. Parmar
General Secretary

It is a well settled principle, declared in Judgments delivered by Various High Courts that once Dealer submits declaration forms with the Department, it creates a strong presumption in support of the claim for deduction. The onus now shifts on the Department do disprove the presumption so created by the Dealer. Disproving the presumption must spring from reliable and legal source and not the source which itself give disclaimer regarding authenticity of data and declares that it cannot be used for legal purpose. Dadra and Nagar Haveli (Central Sales Tax) Rules requires dealer to submit forms at the time of Assessment with the Assessing Authority to claim deduction, hence the onus shifts on Department to refute the presumption with legal and valid source and not otherwise. Therefore, reopening of Completed Assessment and passing orders with Demand for Non Verification of forms on TINXSYS suffers serious legal infirmity.

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Rajan Aggarwal
Vice President

K.T. Parmar
General Secretary

Before the introduction of Nationwide TINXSYS, the practice followed by almost all states of India, while Assessing a dealer under Central Sales Tax Act, would physically verify 5 to 10 % of surrendered forms, randomly selected through sending letters to issuing authority of respective State ward officer. If sample so selected is properly verified than balance forms are taken to be Genuine and the dealer is assessed accordingly.

D & NH VAT Department Started verifying 100% forms on TINXSYS and even if miniscule percentage (e.g. even 0.01%) of forms are Non Verifiable than the value of such turnover is treated as Taxable at full rate. This is absolutely contrary to the practice so far followed. When a larger sample is verifiable the small should be accepted as genuine. **This apprehension is valid because the TINXSYS has certain inherent issues and hence cannot be relied upon in toto. Not to make this representation Prolix, the short comings of TINXSYS are in nut shell as follows:**

1. Many States have not updated their data on TINXSYS
2. State like Punjab Haryana, Jammu and Kashmir and some UT's have not uploaded their data at all.
3. Forms issued off line(Physical) are Not verifiable
4. Forms not verifiable due to typographical error.
5. Uploading of Invoice without prefix or suffix by either dealer
6. Rounding off of Bill Amount
7. TINXSYS site has 'Disclaimer' regarding accuracy of Data. It clearly declares that Data on TINXSYS



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cannot be used for legal Purpose. Assessment is quasi-judicial proceedings.

8. There are judgments disapproving liabilities created on the basis of Verification on TINXSYS. One such observation is given below:

Patna High Court Judgment in the case of M/s Rafai Scrap Udhog Vs The Union of India and others delivered on 16/01/2015.

The official site of the TINXSYS has disclaimer in the most unequivocal language that "GSTN and MSP have not investigated, tested, verified or monitored the contents, information or materials provided on this web site. The GSTN and MSP accept no responsibility or liability whatsoever with respect to the information obtained using this site. This information is obtained from state's databases over which the GSTN or MSP do not have any control and for which GSTN and MSP assumes no responsibility; it is the responsibility of member states to keep their database complete, accurate and up to date. The information on this website is not professional or legal advice.".....

".....The information published at this website may be affected by inaccuracies in data entry and typographical errors."

There are Number of Judgments on this issue, if require, we may supply copies of the same.



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9. CAG Audit Report of Various States have also observed Short Comings in TINXSYS and danger of relying entirely on such Data.

Sir, we are equally concerned about the Revenue's view point on Refund matter. And therefore to ease out the issue in a balanced way, we may, with all politeness in the world suggest that;

- (a) Keeping in the view the precedent followed prior TINXSYS, if 90% forms are verified than no deduction be made from Refund.
- (b) The deduction from Refund on account of Non-Verifiable forms should be correlated to Percentage and not the value. If less than 90% forms are verifiable than deduction will be non-verifiable % from tax liability so arises and not total liability. OR,
- (c) Forms received from State like Punjab and Haryana, Jammu & Kashmir cannot be verified, since both these States have not uploaded their Data on TINXSYS. Hence those forms should be accepted as verified and No liability be raised and/or deduction on that account be made.
- (d) Pending Refunds of 12-13, 13-14, 14-15 and 15-16 be released in full and dealers may be directed to submit balance forms in stipulated period. On expiry of the Stipulated period the liability if any be recovered from Refund of 16-17 & 17-18.
- (e) Full refund can be granted at the first instance and in case of Non Verification of Certain forms even after Completed assessment, the recourse of re-assessment is available with the Department to recover liability.
- (f) Many of our members have reported that Up loading process of data on TINXSYS has slowed

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down considerably since July 2017 i.e the date of
introduction of GST.

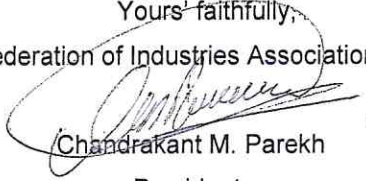
In view of the above, we humbly request your Honour
to adopt a method by which interest of both Revenue
and Dealer is protected and without much deduction,
the Refund is granted to the dealer. This will be a great
help to the ailing Industries.

We further request you to Direct the Assessing
Authority, not to pass Orders and create demand for
non-verification of statutory forms on TINXSYS.

Thanking you.


Yours' faithfully,

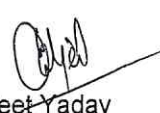
For Federation of Industries Association, Silvassa


Chandrakant M. Parekh

President,

Federation of Industries Associations, Silvassa and
Silvassa Industries and Manufacturers Association,
Silvassa.


Sanjeev S. Kapoor
President
Silvassa Industries
Association, Silvassa


Ajeet Yadav
President
DNH Industries
Association, Silvassa

CC:

1. The Joint Commissioner-VAT, Silvassa
2. The Deputy Commissioner- VAT, Silvassa

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President

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Vice President

K.T. Parmar
General Secretary