

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
ODISHA, CUTTACK

No 12169 /CT, Dated 5-8-16
IV(I)192/2015

C I R C U L A R

- (1) The Hon'ble Orissa High Court vide its order dated 05.10.2015 in W.P.(C)No. 3152 and 3153 of 2013 and W.P.(C)No. 15773 of 2015 in the case of M/s Kasi Sales & Services Pvt. Ltd, have directed as follows:

“xxxx It is also appropriate to bring to the notice of the Commissioner of Sales Tax that numbers of cases are filed before this Court challenging the order of assessment on the ground of non supply of tax evasion reports and not providing opportunity for producing Books of account.

We are of the view that the Commissioner should issue a circular whereby the Assessing Officers shall take care to provide tax evasion report to the assessee as a matter of course and to provide adequate opportunity to respond the same. xxxxx”

- (2) There is no confusion that adverse materials are to be brought to the notice of the assessee. In fact, in the notice in Form VAT-306 under Rule 49(1) of OVAT Rule for audit assessment, it is provided that the copy of Audit Visit Report is to be enclosed along with the notice for reference of the dealer.
- (3) But, there is confusion in some quarter whether copy of tax evasion report (other than Audit Visit Report) will be given to the dealer or not.

There may be ² situation where tax evasion report is made out without verification of books of account, due to non-production of books of account by the dealer. The Hon'ble High Court has already decided this matter in case of Lakhiram Jain and Sons Vrs. Sales Tax Officer, Raygada (209) 21 VST 280 (Ori). The relevant portion of the said judgment is reproduced below.

“xxxx Production of books of account prior to issuance of certified copy of the seized materials is necessary to rule out the possibility of preparation of accounts in line with the seized documents. This has become further necessary in this case as at no stage books of accounts were produced earlier at the time of inspection or before the assessing officer. However, we make it clear that where in the course of inspection the inspecting officer seizes incriminating materials as well as regular books of account from the business premises of a dealer, the assessing officer or the inspecting officer shall supply copies of the seized regular books of account and incriminating materials (s) to the dealer if he asks for the same before asking the dealer for furnishing his explanation in connection with any proceeding under the OVAT Act xxxx.”

- (4) It is, therefore, instructed that when books of account is not produced before the inspecting officer by the assessee, then a copy of adverse materials or tax evasion report can be given to the assessee, if he so demands, only after production of the books of accounts by the assessee to the assessing officer. (The assessing officer may retain a photocopy of the relevant pages of the books of accounts for reference). But if the evasion report is prepared after verification of books of account, then a

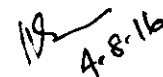
copy of adverse materials or tax evasion report can be given to the assessee on his demand. During assessment, the adverse materials or the tax evasion report are to be duly confronted to the assessee, and it should be recorded in form of a statement and simultaneously reflected in the order sheet.

These instructions need to be followed scrupulously by all Assessing Authorities without fail.




04.8.16
SASWAT MISHRA, I.A.S
Commissioner of Commercial Taxes
Odisha, Cuttack

Memo No. 12170 /CT., Dt. 5-8-16
Copy forwarded to all the Additional Commissioners / Joint Commissioners of Commercial Taxes / Deputy Commissioners of Commercial Taxes / Commercial Tax Officers in charge of assessment units for compliance.



Spl. Commissioners of Commercial Taxes (Law)

Memo No. 12171 /CT., Dt. 5-8-16
Copy forwarded to System Analyst to publish in the official website.



Spl. Commissioners of Commercial Taxes (Law)