

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
ODISHA, CUTTACK.

NO. 21012 /CT
VIII (1)24/2012

DATED 10-12-12

To

All the Joint Commissioner of Commercial Taxes of Territorial Ranges/
DCCTs/ACCTs in-charge of circles.

Sub: Comprehensive instructions regarding Collection of Arrears.

**Ref: This office Circular Nos. 21981/CT, Dated.13.11.03 and 12681/CT, Dated
10.07.2009.**

Sir,

The trend in collection of arrears of revenue under the OST/OVAT/CST Act shows that cumulative arrears have been increasing over the years. The pace of recovery is very slow in comparison to mounting arrears. The percentage of collection of arrears to the total arrears under different acts was only 0.46% in 2010-11. The total arrears outstanding as on date are Rs.4695.85 crore. The increase in outstanding arrears is a result of inadequate attention being paid to collection and monitoring of arrears by the Assessing Officers & Tax recovery officers at the circle levels, as well as the supervising officers at the range level.

It is necessary that the concerned officers should put in maximum efforts for collection of arrears so that revenue due to government is collected in time. Large volume of arrears as compared to the total collection of tax revenue indicates a certain lack of efficacy of the tax administration.

Collection of arrear should therefore be accorded top priority by officers at all levels in the Commercial Tax Department and all arrear cases should be followed up diligently and taken to the logical conclusion. While it is expected that concerted efforts will be put in by one and all, it may be noted that in case of negligence or inaction the concerned officer will have to be held responsible for failure in collection of arrears.

Keeping in view of the above, the following comprehensive instructions are issued for scrupulous adherence by the officers of the Commercial Tax Department.

1. UPDATION OF DEMAND COLLECTION REGISTER AT CIRCLE LEVEL :

Demand Collection Register (DCR)/ Consolidated Demand Collection Register is a pre-requisite prescribed record to watch timely collection of arrear. The said registers should be periodically reviewed by the concerned assessing authorities at the circle level. The demand figures are to be reconciled with reference to the disposal of cases by Appellate Forums/ Courts. The latest position of the cases in appeal and where stay orders have been granted should be updated in the DCR. It is instructed that the DCR should be updated by 31st December, 2012 positively and the circle in-charge should ensure this without fail. The JCCTs and other senior supervisory Officers on their visit to the circles will record their remarks in the said register regarding correct maintenance of the DCR/consolidated DCR.

2. ANALYSIS OF ARREAR DUES:

Simultaneous with the up-dation of the DCR, an analysis of the arrear dues should be carried out in terms of:

- (E) Act wise arrears of Tax, interest & penalty.
- (F) Ageing analysis i.e arrears since 0-1 years, 1-2 years, 2-5 years, 5-10 years and 10 years and above.
- (G) Arrears locked up in different statutory forum /courts.
 - (iv) Stayed by Hon'ble Supreme Court, Hon'ble High Court, CST, Addl. CST, JCST/DCST to be indicated separately.
 - (v) Revenue Recovery Certificate cases.
 - (vi) Before BIFR, Company Court etc.
- (H) Value analysis based on amount of arrears i.e. less than Rs. 500, Rs.500 to Rs.1000/-, Rs.1000 to Rs.10,000/-, Rs.10,000 to Rs.25,000/-, Rs.25,000 to Rs.1 lakh, Rs.1 lakh to Rs.10 lakh, Rs.10lakh to Rs.1 crore, Rs.1 crore to Rs.10 Crore and Rs.10 crore & above.

The above analysis will give an overall view of the arrears to draw up a strategy for collection of arrears.

3. CASES BEFORE DEBT RECOVERY TRIBUNAL, COMPANY COURTS.

Instructions were issued vide Circular No.21981/CT Dated 13.11.03 for collection of arrears in respect of cases pending before Debt Recovery Tribunal and Company Court. Section 13-B of the OST Act and Section 55 of the OVAT Act creates a first charge in respect of the sales tax/VAT dues. Large numbers of arrears cases are pending before the Debt Recovery Tribunal, Company Courts and BIFR. Financial Institutions and Banks also are taking steps for recovery of their dues by disposing of assets of the defaulting entities. It is important that the TRO should present their claims before the appropriate authorities as per provisions of law to safeguard the interest of revenue. The recent judgment of Hon'ble Supreme Court of India in case of **Central Bank of India -vrs- State of Kerala and others in Civil Appeal No.95/2005 dated. 27.2.2009** may also be referred to regarding Sales Tax/VAT claim as first charge for recovery of arrears.

The Revenue Section of the CCT Office shall monitor cases pending with BIFR, Company Court and Debt Recovery Tribunal and coordinate with the circle/range offices in this matter and if required issue separate instruction in this matter. Addl. CCT (Revenue) shall be the nodal officer at the CCT Office.

4. TIMELY ACTION FOR PREVENTING CASES TO BE BARRED BY LIMITATION.

As per the period of limitation for recovery of tax U/s 13-C of the OST Act, 1947, no proceeding for recovery of any amount under sub-section(7) of section 13 or under sub-section (6) of section 13-A shall be initiated after the expiry of twelve years from the date of the relevant assessment. Similarly, Section 56 of the OVAT Act mandates that no proceedings for recovery of any amount under sub-section (7) of Section 50 or under sub-section (6) of Section 51 shall be initiated after the expiry of five years from the date the amount becomes due for payment. Instructions were issued vide Circular No.12681/CT Dated 10.07.2009 regarding initiation of recovery proceedings in such cases. All arrear cases should be reviewed so that recovery proceedings are initiated in time and cases do not become barred by time limitation.

5. HIGH VALUE CASES TO BE MONITORED BY SUPERVISING AUTHORITIES.

In all cases of arrears exceeding Rs.25lakh, the concerned Range JCCT should personally monitor and review the cases on a monthly basis and issue necessary

instructions to the circle officers/assessing officers/Tax recovery officers to expedite the collection of revenue. The Circle-in-charge should monitor all cases of arrear exceeding Rs.5 lakh and in cases where arrears are below Rs.5 lakh, the concerned Assessing officer should monitor and ensure that appropriate statutory action is taken. The above limits will be Rs.1 Crore and Rs.25 lakh respectively in case of Bhubaneswar & Cuttack Ranges.

6. VACATION OF STAY AND DISPOSAL OF APPEAL CASES.

Action should be taken at all levels for filing petitions before appropriate appellate forums to vacate stay or dispose of the appeal in respect of cases involving high stake of revenue. Action should also be taken to dispose the cases which have been remanded/Set-aside by the appellate authorities i.e. Addl. CSTs, the Sales Tax Appellate Tribunal and the Hon'ble High Court in a time bound manner. Ordinarily, all such cases should be disposed of within a period of 6 months from the date of receipt of orders of the appellate authority. Steps may also be taken to dispose of appeal cases in a time bound manner as per instructions communicated vide Letter No.I(XLVI)23/12(P)-18470/CT, dated. 31.10.2012.

7. TAX RECOVERY PROCEEDINGS.

Collection of arrears require systematic and planed effort on the part of the assessing officers and Tax Recovery Officers to recover such dues as arrears of public demand in accordance with the provisions contained in the schedule to the Acts.

- (i) Where the dealer fails to make payment of the tax assessed, interest payable or penalty imposed, within 30 days of the date of service of notice of demand, the assessing authority should, if the matter has not been stayed by higher forum, take recourse to proceedings for special mode of recovery and initiate recovery proceedings. It is however observed that the assessing officers are issuing notices under Section 50(5) of the OVAT Act for imposing additional penalty and allowing time to the dealer. Imposition of further penalty on the tax assessed along with interest and penalty, should be in the nature of a parallel proceeding, and should not in any manner hold up the initiation of the recovery proceeding for collection of demand raised.

- (ii) No time has been prescribed under the OST/OVAT Act and Rules made there under for issuing demand notice to the dealer and certificate requisition to the TROs by the assessing authorities after completion of assessment. It is seen that the assessing authority are in some cases making inordinate delay in issuing such demand notice to the dealers and certificate requisition to the TROs. It is hereby directed that the demand notice should be coterminous with the assessment order. The requisition to the TRO in Form-1 should be made not later than 6 months from the date on which the demand becomes due for collection. In case the dealer does not prefer appeal, then steps for collection of dues or proceeding for recovery as appropriate should be initiated forthwith after expiry of the statutory period provided for preferring appeal.
- (iii) There is also no time limit prescribed under the OST, OVAT Acts and Rules made there under for issuing notices to the dealers in Form-2 by the TROs after receipt of certificate requisition in Form-1 from the assessing officer. It is directed that Form-2 shall be issued by the TRO within 15 days of receipt of requisition in Form-1.
- (iv) There should not be any delay in making collection merely because an appeal or revision petition is pending. The officers in charge of collection of revenue are not expected to withhold steps for collection/recovery merely on the basis of any appeal revision petition unless stay order have been issued by the appropriate authority.

8. FOLLOW UP ON RECOVERY PROCEEDINGS.

- (i) It is also observed that the TR proceedings once initiated are not being followed meticulously. As per the Procedure for Recovery of Tax prescribed in the Schedule to the OST/OVAT Act, if the amount mentioned in the notice in Form-2 served to the dealer is not paid within the time specified therein or within such further time as the TRO may grant, he shall proceed to realise the amount by one or more of the following modes (a) by attachment and sale of defaulter's movable property (b) by attachment and sale of the defaulter's immovable property (c) by arrest of the defaulter and his detention in prison. In case of running concerns and the concerns having movable/immovable

properties within the state, no excuse shall be accepted, if there is a failure on the part of the TRO to take effective, timely and purposeful action under the Act.

- (ii) The large accumulation of arrears is also a result for lack of follow up action for recovery, failure in attaching property, delay in auctioning the attached property, absence of coordination with the other Departments like Revenue Department and Transport Department and also with the counterparts in other states. The concerned TROs, through the Circle in charge and JCCT shall make a list of all such cases where information has been requisitioned from different Departments in the State for movable/immovable properties, so that this can also be taken by the Revenue Wing of the CTD with the concerned Departments. Similarly, all such pending request for information/action sent to Revenue authorities/Sales Tax authorities in other states should be collected and sent to the CTD for taking up the matter with concerned Departments.

You are requested to take appropriate action for collection of arrear dues as per the instructions above. Any dereliction in this regard shall be viewed seriously and disciplinary action will be initiated on the erring officers.

Yours faithfully,




(Manoj Ahuja, IAS)
Commissioner of Commercial Taxes,
Odisha, Cuttack.

Memo No. 21013 /CT

Dated 10-12-12

Copy to all Addl. CCTs/ Addl.CCT-Cum-SRs/ JCCT (VAT)/ DCCT, VAT/ LAW/ Appeal/ ACCT, Administration/Law/Policy/DSR for information and necessary action.



Commissioner of Commercial Taxes,
Odisha, Cuttack.