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GOVERNMENT OF JAMMU AND KASHMIR**State Taxes Department**EXCISE AND TAXATION COMPLEX,
SOLINA, SRINAGAR / PANAMA CHOWK, JAMMU

Jammu, Dated the 19/April 2023

Sub : Release of FDR's furnished by Transporters and Courier Service agencies Under erstwhile J&K VAT Act, 2005-reg**Ref: Letter No-17/CT/ACST(A&E) J/31 dated 24.01.2023 received from Additional Commissioner State Taxes (A&E), Jammu****CIRCULAR NO. 01/GST/CT 07 2023**

Representations have been received from transport and courier agencies regarding release of FDRs furnished by transporter/courier agencies at the time of registration. In this connection Additional Commissioner State Taxes (A&E), Jammu has sought clarification on the issue that in majority of the cases transporters/ courier agencies have not either filed or filed late monthly returns and penalty for non-filing/late filing of returns as per the provision of Section 69(1)(e) of the J&K VAT Act, 2005 (now repealed) have not been levied.

2. The matter is examined as under:

i) that the rolling over to the GST regime does not automatically liquidate the obligations fastened on the dealers and rights and functions conferred on the machinery to enforce the obligation or liability said to have been occasioned under the JKVAT Act, 2005. The absence of initiation of any proceeding before 8.07.2017 is not a criterion at all in the scheme of the JKVAT Act, 2005.

ii) The migration to GST is not an amnesty given to defaulting dealers from paying the tax or non-complying provisions due under the JKVAT Act, 2005. The filing of returns, self-assessment and the best judgment concepts are kept in perspective while assuming a right in favour or discharge of a legal obligation by a dealer. Juxtaposing the legal obligations under the JKVAT Act, 2005 fastened on a transporter/courier agency or how the obligation could be said to have been discharged, it is considered that the Department has not disintitiled itself from enforcing its right to recover the defaulted tax or any other dues under the JKVAT Act, 2005 arising before 08/07/2017.

iii) The repeal of the Acts and the amendment of the Acts specified in section 173 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Acts or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Acts or repealed Acts or orders under such repealed or amended Acts: Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any tax, surcharge, penalty, fine, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Acts or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed; or

(f) affect any proceedings including that relating to an appeal, revision, review or reference, instituted before, on or after the appointed day under the said amended Acts or repealed Acts and such proceedings shall be continued under the said amended Acts or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in section 173 and subsection (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

iv) In terms of Section 174(1)(f), it is clear that the repeal of the Act specified in Section 173 shall not affect any proceedings including that relating to an appeal, revision, review or reference, instituted before, on or after the appointed date, under the said repealed Acts and such proceedings shall be continued under the said repealed Acts as if JKGST Act had not come into force and KVAT Act had not been repealed.

v) Section 68 of the JKVAT Act deals with obligations put on forwarding agencies involving transport and courier agencies. Section 68(2) of JKVAT Act, 2005 requires forwarding agencies to file returns and Section 69(1)(e) of the JKVAT Act prescribes penalty for non-filing of returns as required under section 68.

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Accordingly, it is clarified that section 69(2) of the J&K VAT, act 2005 clearly mentions **that no order of penalty shall be passed after the expiry of two years from the close of the financial year in which such penalty proceedings were initiated.** Thus, if the proceedings for penalty were initiated but no order is issued within the time period of two years from the close of the FY in which such proceedings were initiated then the orders to that effect cannot be issued. However, if the proceedings were not initiated earlier due to one or the other reason, same can be initiated even today despite the fact that J&K VAT, act,2005 stands repealed as the reference in the matter can be drawn from the saving clause 174(2) and 174(3) of the J&K GST, Act,2017. Therefore, in all such cases where no liability has been raised or the cases have become time barred in reference to section 69(2) of the J&K VAT,Act,2005, FDRs if any shall be realised without any delay and wherever demands have been created and are unpaid till date, FDRs in all such cases shall be forfeited against the liability.

- 3) This Circular cannot be made use of for legal interpretation of the provisions of law, as it is clarificatory in nature.



(Dr. Rashmi Singh) IAS

Commissioner, State Taxes, J&K

Dated: 19-4-23

No: BG/134/VAT/A/18-80/ST

Copy to the:

1. Administrative Secretary, Finance Department, Civil Secretariat, J&K.
2. Additional Commissioner, State Taxes (Administration and Enforcement)Jammu/Kashmir.
3. Additional Commissioner, State Taxes (Tax Planning, Policy & Advance Ruling) J&K.
4. Deputy Commissioner, State Taxes Enforcement (Central) Jammu/Kashmir.
5. Deputy Commissioner, State Taxes Enforcement Kathua, H.Q at Lakhampur.
6. Deputy Commissioner, State Taxes (Recovery) Jammu/Kashmir
7. Deputy Commissioner, State Taxes (Appeals I & II) Jammu/Kashmir.
8. Deputy Commissioner, Stamps Jammu/Kashmir.
9. Deputy Commissioner, State Taxes (IT, Data Analytics & Economic Intelligence) Jammu/Kashmir.
10. Deputy Commissioner, State Taxes Enforcement South/North/Udhampur/Samba Jammu.
11. Deputy Commissioner, State Taxes Enforcement South/North Kashmir.
12. All Assistant Commissioners of State Taxes Jammu/Kashmir.
14. All State Taxes Officers of Jammu/Kashmir Division.
15. In-charge website.
15. Office File