

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE AUTHORITY FOR
CLARIFICATION AND ADVANCE RULING**

ACAAR No.54/2015-2016
Acts cell-II/22350/2017

Dated:07.06.2018

- Present:**
1. Dr. T.V. Somanathan, I.A.S.,
Principal Secretary / Commissioner of Commercial Taxes.
 2. Thiru M. Parameswaran,
Additional Commissioner (ST), (Public Relations)(FAC)
 3. Dr. C. Palani,
Additional Commissioner (ST), (Revision Petitions)(FAC)

1	Name and address of the Applicant	:	Tvl.A.G.Granites Private Limited, M.G.Colony, Harur-636903
2.	Registration Certificate No.	:	TIN.33663341427 CST No.449586
3.	Assessment Circle	:	Harur Assessment Circle.
4.	Date of application	:	08/07/2015
5.	Date of receipt of application	:	17.07.2015
6.	Clarification sought for	:	Rate of tax on " HSD Used for Operating Fork Lift in Granite Industry "
7.	Date of Personal Hearing	:	--
8.	Represented by	:	--

ORDER

Tvl. A. G. Granites (P) Limited, M. G. Colony, Harur-636903 (TIN-33663341427), registered dealers in the files of Harur Assessment Circle have preferred application in Form 'VV' and sought clarification under Section 48-A (1) of the Tamil Nadu Value Added

Tax Act, 2006 (TNVAT Act,2006), read with Rule 12-A of the Tamil Nadu Value Added Tax Rules, 2007 (TNVAT Rules, 2007).

2. The applicant-dealers have sought for clarification on the rate of tax for **"HSD Used for Operating Fork Lift in Granite Industry"**. The applicant dealers have stated that they being a 100% Export Oriented Unit with a Green Card License No.2427/MEPZ/ valid up to the year 2020 use HSD for operation of Fork Lifts and it is estimated at 40% of Total Purchase Cost of the entire purchase value of HSD. They are using the HSD purchased using Green Card for moving rough granite blocks using Fork Lift which cannot be done with human power and without such movement manufacturing of monuments cannot happen. They have also stated that these Fork Lifts used within the factory premises are used for loading and unloading cut blocks of various sizes in various machines and for moving packing materials from the polishing Section to the Transport section for loading into the transport vehicles for moving it to the Port of Destination. They have also enclosed copy of the Green Card, Notification issued under TNGST Act, TNVAT Act 2006, copy of the Pre-assessment notice issued by the CTO, Harur for perusal.

3. The issue has been examined in detail with reference to the provisions of the TNVAT Act, 2006 and TNVAT Rules, 2007 and the related entries in all the Schedules to the TNVAT Act, 2006. Section 48-A of the TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities.

4.1. The applicant-dealer have effected purchase of High Speed Diesel (HSD) from Oil Companies without paying tax on the pretext of being an Export Oriented Unit with reference to the G.O. Ms.No.193 CT&R(B2) dated 30/12/2006 vide Notification No.II(1)/CTR/58(h-14)/2006 dated 30/12/2006 effective from 28/06/2005 subject to the production of the certificate as under:-

"Certified that the goods listed below were purchased by us for the purpose of setting up operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging on for use as packing material or packing accessories in our unit located -----in special Economic Zone----- for export out of India"

4.2 This notification is applicable to all the Registered dealers for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing materials or packing accessories in an unit located in Madras Special Economic Zone, Tambaram, Chennai and other Special Economic Zones in the States of Tamil Nadu notified by the Government of India. Perusal of the letter issued by the Assistant Development Commissioner to the applicant dealer revealed that EOU status has been renewed and a fresh green card bearing No.2427/MEPZ dated 05/03/2015 valid upto 04/03/2020 issued to them. This clearly proved that the approval letter is related to 100% Export Oriented Unit and it differs from the Special Economic Zone status where the above said benefit is not applicable. Thus the applicant dealer is not entitled to enjoy such benefits as there is no provision under TNVAT Act 2006 conferring certain concessions and benefits exclusively for 100% EOU as in the case of Special Economic Zone under Section 18 of the said Act.

4.3. The clarification sought by the applicant dealer on the applicable rate of tax for HSD in two contexts, one being such purchase is made by them as EOU and another being the said commodity is used for operating the Capital goods (Forklifts). Since the clarification on the rate of tax is sought in certain specified circumstances, it is evidently clear that those are not within the purview of this Committee for Advance Ruling and therefore the request for clarification is not feasible of compliance. It is also ascertained that for the same issue, the jurisdictional assessing officer has denied the exemption from tax on the said purchase of HSD on

the ground that the said goods are not Raw materials, Consumables and Packing materials as specified in MEPZ approval of Green Card and passed final order raising demands for the years 2008-09, 2009-10 and pre-assessment notice issued for the years 2010-11 and 2011-12 and kept pending. Against the said finalized assessment orders, the applicant dealers filed an appeal before the Appellate Deputy Commissioner (CT), Salem in AP:29/2015 and 30/2015 and pending till date.

5. As per Section 48(A)(2) of TNVAT Act 2006, the application filed in Form VV for certain clarification shall not be entertained when the question raised in the application is already pending before any appellate or Revisional authority of the Department or Appellate Tribunal or any Court. Section 48(A)(2) reads as follows:-

"No application shall be entertained where the questions raised in the application:-

- (i) is already pending before any appellate or revisional authority of the Department or Appellate Tribunal or any court (or)*
- (ii) relates to an issue which is designed apparently for avoidance of tax;*

Provided that no application shall be rejected under this subsection without giving the applicant a reasonable opportunity of being heard and where the application is rejected, the reason for such rejection, shall be recorded in the order."

6. Hence the applicant dealers is clarified that the questions raised in the application being applicable rate of tax on **"HSD Used for Operating Fork Lift in Granite Industry"** is not capable of Compliance as it is not within the purview of the Committee for Advance Ruling and Clarification.

Dated this the Seventh day of June 2018.

Sd./- M. Parameswaran,
Additional Commissioner (PR)(FAC)

Sd./- Dr. C. Palani,
Additional Commissioner (PR)(FAC)

Sd./- Dr. T.V. Somanathan
Commissioner of Commercial Taxes

To
Tvl. A. G. Granites Private Limited,
M.G.Colony, Harur-636903.
Dharmapuri District.

Copy to:
State Tax Officer (ST),
Harur Assessment Circle.

The Joint Commissioner (ST),
Salem Division.

✓ The Joint Commissioner (CS)
To host in the Department Website

The Principal Secretary to Government, Commercial Taxes & Registration Department, Chennai - 9.

All Joint Commissioners (ST) including Enforcement, LTU, MOU and ISIC.

All Deputy Commissioners (ST), Territorial, Assessment and Enforcement

All Head of Offices (Assessment)

The State Representative, Sales Tax Appellate Tribunal, Chennai- 104.

The Addl. State Representative, (AB) Chennai, Madurai and Coimbatore.

The Director, CTSTI, Greams Road, Chennai - 6.

The Executive Officer, Traders Welfare Board, Chennai - 5.

The Accountant General (Audit)-II, No.44, Greams Road, Chennai - 6.

The Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Commercial Tax Officers in CCT's Office.

Personal Clerk to the CCT.

Stock File 3/ Acts Cell-II /Spare - 5.

//Forwarded/By Order//

[Signature]
State Tax Officer 28/06/18.