

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

**ACAAR No. 15/ 2012-13.**  
**Acts cell – II/3642/2014**

Dated 02.12.2014

- Present:**
1. Thiru. K.Rajaraman, I.A.S.,  
Principal Secretary & Commissioner of Commercial Taxes.
  2. Thiru. R.Vayanaperumal,  
Additional Commissioner (CT), (Public Relations)
  3. Thiru. K.Mahalingam,  
Additional Commissioner (CT), (Revision Petitions)

1	Name of the Applicant	:	Tvl. Kurlon Limited, No.194, First Floor, Pycrofts Road, Royapettah, Chennai -600 014.
2.	Registration Certificate No.	:	TIN:33160680798 / CST:040968
3.	Name of the Assessment circle	:	Triplicane – II, Chennai
4.	Date of review application	:	27.01.2014
5.	Date of receipt of application	:	31.01.2014
6.	Clarification sought for	:	Review of clarification in respect of "Poly Urethane Foam" in ACAAR No.15/2012-13 dated 25.07.2012.
7.	Date of Personal Hearing	:	12.03.2014
8.	Represented by	:	Thiru. Baktha Sironmani, VAT Practioner & Thiru. K.N.Varadaraja Authorized Signatory.

**ORDER**

Tvl. Kurlon Limited, @ No.194, 1<sup>st</sup> Floor, Pycrofts Road, Royapettah, Chennai – 600 014 (TIN: 33160680798), registered dealers in the files of Triplicane –II Assessment Circle, manufacturing and marketing Poly-urethane Foam Sheets and Mattresses, have preferred this review application as provided under Section 48-A (4) of the TNVAT Act, 2006. This review application is being preferred against the clarification already advanced in respect of rate of tax on "Poly Urethane Foam" in ACAAR No. 15/2012-13 dated 25.07.2013, wherein it has been clarified that Poly

Urethane Foam is taxable @ 14.5 % under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006.

2. The applicant-dealer has sought for personal hearing. The Authority for Clarification and Advance Ruling have provided the opportunity of personal hearing on 12.03.2014. The applicant-dealers were informed in writing to appear before the Authority on 12.03.2014. Thiru. K.N.Varadaraja, the Authorized Signatory of the applicant-dealers, has represented appeared before the Authority on 12.03.2014 for hearing and placed his arguments with the request to reconsider the clarification already advanced and to clarify the rate of tax bearing in mind that the Poly Urethane Foam Sheets is a Plastic Product liable to 5 %, as the product is manufactured out of plastic raw materials.

3. The applicant-dealers have pointed out that the clarification advanced by the Advance Ruling Authority in its proceedings dated 25.07.2012 is found to be incorrect in the light of Notification in G.O. Ms. No.79, CT & R (B2) Department dated 23.03.2007 and therefore needs to be reviewed and re-clarified correctly. Besides, the applicant-dealers have placed reliance on the decisions by the Hon'ble Supreme Court, in the case of Super Urethane Products Pvt. Ltd. vs. Collector of Central Excise in Civil Appeals No. 4938 to 4942 of 1990 dated 02.04.1996, wherein the Apex Court upheld the decision of the Central Excise and Customs Tribunal and adjudged that Polyurethane sheets would fall under Chapter 39 of the Central Excise Tariff Act for Plastic Goods. Further, the applicant-dealers have claimed that Polyurethane sheets shall be treated as industrial inputs in the light Entry 67 of Part-B of First Schedule to the Act, since the said product is being supplied to other manufacturers of Upholstery, Mattresses, Furniture and Sofa set and accordingly clarified.

4. The issue has been examined in detail with reference to the provisions for review made under Section 48-A(4) of the TNVAT Act, 2006 and in the light of Notification issued under Section 30 in G.O. Ms. No.79, CT & R (B2) Department dated 23.03.2007 and the relevant Entries in First Schedule to the Act. Section 48-A (4) of TNVAT Act, 2006 provides for the Advance Ruling Authority to review, amend or to revoke the clarification issued on any point concerned with rate of tax for commodities at any point of time. In the present case, the applicant dealers have invited the jurisdiction of the Advance Ruling Authority to review its proceedings dated 25.07.2012 as aforesaid, wherein it has been clarified in respect of rate of tax on Polyurethane foam sheets as given below:

*"Poly Urethane Foam (PU Foam) is unclassified item taxable at 14.5 % under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006."*

The issue needs to be decided on this review application is,

"Whether the clarification in Proceedings of the Advance Ruling Authority dated 25.07.2012 as above stated is incorrect as claimed by the applicant-dealers; and to be re-clarified?"

5. Poly Urethane Foam Sheets manufactured out of Polyol and Di-isocyanate by polymerization process. The Hon'ble Supreme Court in the case of Super Urethane Products Pvt. Ltd. Vs. Collector of Central Excise in Civil Appeals No. 4938 to 4942 of 1990 dated 02.04.1996, on appeal by the Department of Central Excise against the order of Central Excise and Customs Tribunal reported in [1990] 48 ELT 310, have upheld the decision of the Tribunal and adjudged that Polyurethane foam is a product of plastic industry falling under Central Excise Tariff heading 3921, Chapter 39 of Central Excise Tariff Act. Therefore there is no doubt about the nature of the polyurethane foam sheets being plastic products.

6. Despite having understood that Polyurethane Foam is being a plastic product, the Advanced Ruling Authority, while on considering earlier the application for clarification concerned with the rate of tax on Polyurethane Foam (PU Foam), have found no relevant Entry of the description, "Polyurethane Foam or Plastic Foam" either in Part-B or Part-C of First Schedule to the Act. The Advanced Ruling Authority had therefore taken the lead given by the applicant-dealers, in Row 3 of their application, by classification of their product, "Polyurethane Foam Sheets" under Entry 69 of Part-C of First Schedule to the Act and accordingly clarified as stated above. No entries relating to plastic good or Products are seen in First Schedule other than the Entries 102 with the description, "Plastic granules, plastic powder, master batches and scraps" and 103 with the description, "Plastic Raw Materials". It is therefore fairly correct to infer that Polyurethane Foam (PUF) would fall within the ambit of Entry 69 with the description, "Any other goods, not specified in any of the schedules" in Part-C of First schedule to the TNVAT Act, 2006.

7. As correctly pointed out by the applicant dealers, Notification No. II(1) / CTR / 12(R-20)/2011 in G.O. Ms. No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011 issued under section 30 of the Act, provides reduction in rate of tax to 5 % for several commodities which are normally taxable at 14.5 % and one among them in Serial No. 13 is related to Plastic goods, the description of which reads as extracted below:

*"All plastic goods other than doors, windows, frames, profiles, automobile, industrial and sanitary items."*

Originally the rate of tax was reduced from 12.5 % to 4 % with effect from 01.01.2007, under Notification No.II (1)/CTR/30(a-5)/2007 in G.O.No.79 dated 23.03.2007. Inadvertently, this fact of reduction in rate as per the aforesaid notification was not considered by the Advance Ruling Authority while its earlier clarification dated 25.07.2012.

8. Besides, the applicant-dealers have claimed that PU Foam Sheets are liable to be the inputs for manufacturers of Upholstery, Mattresses, Furniture and Sofa set. This fact is confirmed from the web literature on Polyurethane foam and its uses. The Polyurethane Foam sheets, even otherwise than there is no reduction in rate of tax by notification, would eligible to be treated as Industrial Inputs as within the scope of Entry 67 of Part-B of First Schedule, which enables the purchase of goods normally taxable at 14.5 % under Part-C of the First Schedule at 5 % against certification prescribed under Rule 6(3)(b) of TNVAT Rules, 2007.

9. The Clarification, based on the above observations, in this regard is as below:

The Polyurethane Foam is a plastic good, liable to tax at reduced rate of 5 %, as per Entry in Sl. No.13 in the list of goods, which are normally taxable at 14.5 % under Part-C of first Schedule, under Notification No. II(1)/CTR/12(R-20)/2011 in G.O. Ms. No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011, brought into effect from 12.07.2011.

Dated this, the 2<sup>nd</sup> Day of December, 2014.

R. Vayanaperumal,  
Additional Commissioner (PR)

K. Mahalingam,  
Additional Commissioner (RP)

K. Rajaraman,  
Principal Secretary/  
Commissioner of Commercial Taxes

To

Tvl. Kurlon Limited,  
No.194, First Floor,  
Pycrofts Road,  
Royapettah,  
Chennai -600 014.

Copy to:

The Assistant Commissioner (CT)  
Royapettah Assessment Circle

The Joint Commissioner (CT),  
Chennai (East) 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 (CT) including Enforcement, LTU, MOU and ISIC.  
All Deputy Commissioners (CT), 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 File3 / Acts Cell-II / Spare – 5.

//Forwarded/By order//

  
Additional Commissioner (PR)