

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

ACAAR No.15/2011-2012
Acts cell-II/35263/2014

Dated:13.08.2018

- Present:**
1. Dr.T.V. Somanathan, I.A.S.,
Additional Chief 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)

REVIEW ORDER

1. Proceedings of the Authority for Clarification and Advance Rulings in ACAAR.15/2011-12 (Acts Cell-II/2775/2012) dated 03.04.2012 issued to Tvl. Aruchem, 252, Angappa Naicken Street, Chennai -600 001.
2. Order of the High Court of Madras in W.P.No.27345 of 2014 dated 15.10.2014
3. Review application filed by Tvl. Haripriya Printers & traders Pvt. Ltd, No.147, Dr. Besant Road, Triplicane, Chennai - 600 005 dated 18.11.2014 received on 19.11.2014.

Tvl. Haripriya Printers & traders Pvt. Ltd, No.147, Dr. Besant Road, Triplicane, Chennai - 600 005 (TIN:33510742443), registered dealers in the files of Thiruvallikeni Assessment Circle have preferred application under Section 48-A (4) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006), read with Rule 12-A of Tamil Nadu Value Added Tax Rules, 2007 (TNVAT Rules, 2007) for review of clarification already advanced vide proceedings 1st read above.

2. On application by Tvl. Aruchem, 252, Angappa Naicken Street, Chennai -600 001, it was clarified in the proceedings 1st cited as follows:

"The clarification is that, industrial gaskets, if sold outside the State without 'C' Form is taxable at 14.5% under CST Act. The provision of filing of Form 'D' by Government Department has been withdrawn with effect from from 01.04.2007. Hence industrial gasket, if sold outside the State to a Government Department is taxable at 14.5% under CST Act."

3. Aggrieved on the above clarification, the applicant-dealers have filed the review application as per directions issued by Hon'ble High court of Madras in the orders of writ petition vide reference 2nd cited.

4. As the applicant-dealers sought for personal hearing they were called for personal hearing on 28.04.2015, during which the applicant-dealer sought adjournment and they were again called for personal hearing on 26-10-2016. Thiru. R. Venkatraman, STP and Counsel of the applicant-dealers appeared for the hearing and filed written statements and other documentary evidences and reiterated whatever stated in the written statements. The applicant-dealers were again called for personal hearing on 05-07-2018 to put forth their claims. However the applicant-dealers failed to appear for the personal hearing.

5.1. The applicant-dealer in their review application have stated that they are engaged in buying and selling of the printing machinery. The printing machinery dealt by them comes under the purview of capital goods taxable as per S.No.25 of Part B of Ist schedule to the TNVAT Act and they are making payment of tax at 4% till 11.07.2011

and thereafter at 5% in respect of interstate sale without 'C' form and at local rate as per section 8(2) of CST Act.

5.2. The applicant dealer has further stated that clarification issued in Lr.No.VAT Cell/39281/2007 (VCC No.1038 dated 09-08-2007) is contradictory to the clarification issued in ACAAR No.15/2011-12 dated 03.04.2012.

5.3. The applicant-dealer by mentioning the Section 2(11) and Rule 10(4)(b) of TNVAT Rules, 2007 contended that the phrase set out namely "used in State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government" has no application to the rate of tax. The same applies only to Rule 10(4)(b) of the TNVAT Rules 2007. Hence, the rate of tax for the purpose of this Act is only at 4% upto 11.07.2011 and thereafter at 5% and the same is applicable for all purposes and therefore the clarification issued by the authorities at 12.5% and 14.5% respectively is against law and as such may be set aside.

6. The applicant-dealer also raised the following grounds and relied certain clarifications.

- a. The earlier clarification issued in Proceedings bearing Lr.No.VAT Cell/39281/2007 (VCC No.1038 dated 09.08.2007)
- b. Clarification issued in ACCAR No. 092/2013-14 Acts Cell - II/38708/2013 and ACAAR No.133/2013-14 Acts Cell - II/8803/2014 provide 5% for the manufacturers as well as traders and therefore the same is applicable to interstate sales under Section 8(2) of the CST Act, 1956 as per the reading of the serial No.25 of part B of the First Schedule of the TNVAT Act, 2006

c. The decision rendered by the Division Bench of Madras High Court in batch of Writ Petition in W.P.No.37604 of 2007 and other dated 05.04.2016 has no application and hence there is no impediment what so ever in setting right the clarification.

7. By relying on the above facts and grounds the applicant-dealer prayed the authority for clarification and advance ruling to set right the clarification issued to Tvl.Aruchem, Chennai -600 001 taking into the account the provision contained in section 2(11), 19(3)(a) and 19(3)(b) and S.No. 25 part B of First Schedule to TNVAT Act, 2006, the rule 10(4)(b) of TNVAT Rules, 2007, Section 8(2) of the CST Act, 1956 and the decisions rendered by High Courts as well as Supreme Courts under section 8(2) and 8(2-A) of CST Act, 1956 and the decision of Madras High Court in W.P.No.37604 of 2007.

8. Perusal of the review file revealed the following position.

- (i) That the applicant Tvl. Haripriya Printers dealer in imported printing machine sought relief from the High Court to quash the Advance Ruling order issued in the case of Tvl. Aruchem, dealer in Industrial Gaskets.
- (ii) As observed from the High Court order neither notice or order passed on this dealer imposing higher rate of tax on sale of printing machine to other state without C form by relying on the clarification issued to another dealer Tvl.Aruchem, dealer in Industrial Gaskets.
- (iii) The High Court has issued direction to the Advance Ruling Committee to consider the review application filed by the dealer and pass a reasoned order within a period of six weeks by relying on the decision rendered in the case of Association

of Paint manufacturer in W.A. Nos.1660,1731 and 2135 of 2013 under the assumption that the dealer is affected by the clarification issued in the case of Aruchem, dealer in industrial gaskets, whereas the applicant Tvl.Haripriya printers, a dealer in imported printing machinery not at all been served with any notice.

- (iv) On the basis of High Court order issued in their favour, the dealer-applicant requested to revise the clarification issued to Tvl.Aruchem, Chennai for whom it was clarified that "Industrial Gasket" is taxable at 14.5% in respect of inter-state sales without 'C' form.
- (v) During the Personal hearing held on 26/10/2016, the applicant dealer in their grounds prayed to set right the clarification taking into account the provisions contained in Section 2(11), 19(3)(a) and 19(6) and Sl.No.25 of part B of I schedule to TNVAT Act 2006, the rule 10(4)(b) of TNVAT rules, 2007 Section 8(2) of CST Act 1956 and the decision rendered by the High Courts as well as supreme courts under section 8(2) and 8(2-A) of CST Act 1956 and the decision of Madras High Court in WP.No.37604/2007 and others mentioned above.

9. From the above, it is made clear that the clarification issued in ACAAR: 15/2011-12 dated 03/04/2012 as requested by the applicant dealer cannot be revised due to the fact that,

- (i) The order is not set aside by the High Court.
- (ii) The clarification already issued pertains to Tvl.Aruchem and they have not filed any review application and pending before this Committee.
- (iii) Commodity in both the cases are different

Since, the High Court, has issued direction to the committee to consider the application on merits, the issue is dealt with reference to

imported printing machine dealt by the applicant dealer instead of reviewing earlier clarification dated 3/4/2012 as under.

Though the context under which clarification has to be issued to the applicant dealer is not known, (as there is no definite request with reference to imported printing machinery), the clarification if at all is issued in the following contexts.

- (A) Rate of tax on the commodity if sold to registered dealer within the state;
- (B) Rate of tax on the commodity if sold to un-registered dealers within the state
- (C) Rate of tax on the commodity if sold to registered dealers in other state
- (D) Rate of tax on the commodity if sold to un-registered dealers in other states.

10. In their application, the applicant dealer is very particular about the usage of phrase "used in the state for the purpose of manufacture, processing as may be notified by the Government". In this regard, it is necessary the fact that the similar issue has been dealt by the Honourable High Court and confirmed by the Supreme Court in the case of Tvl. Schwing Stetter and it was made clear that the purpose for which the phrase "used in the state" is quite applicable in all the cases and the claim of the petitioner was not accepted upon.

11. In view of the above discussion, it is therefore clarified that

- (i) Imported Printing Machinery, being a machinery not finding place anywhere in the schedules is taxable at 14.5% under 69 of Part 'C' of first schedule if sold to un-registered dealers within the state.
- (ii) Imported Printing Machinery, being a machinery not finding place anywhere in the schedules is taxable at 5% under entry 25 of Part B of first schedule if sold to **manufacturers & registered under TNVAT Act 2006 located within** the state.
- (iii) Imported Printing Machinery, being a machinery not finding place anywhere in the schedules is taxable at 14.5% under

entry 69 of Part –C of first schedule if sold to traders registered under TNVAT Act 2006 located within the state.

- (iv) Imported Printing Machinery, being a machinery not finding place anywhere in the schedules is taxable at 14.5% under entry 69 of Part –C of first schedule if sold outside the state to traders/manufacturers unregistered in the respective state where they are located.
- (v) Imported Printing Machinery, being a machinery not finding place anywhere in the schedules is taxable at 2% if sold outside the state to traders/manufacturers registered in the respective state where they are located subject to production of 'C' form declaration as required under section 8(2) of CST Act 1956.

Dated this, the Thirteenth Day of August 2018.

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

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

Sd/- T.V. Somanathan,
Additional Chief Secretary/
Commissioner of Commercial Taxes

To,

Tvl. Haripriya Printers & traders Pvt. Ltd,
No.147, Dr. Besant Road,
Triplicane, Chennai – 600 005.

Copy to:

The Assistant Commissioner (CT)
Thiruvallikeni 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//


State Tax Officer