

GOVERNMENT OF TAMILNADU COMMERCIAL TAXES DEPARTMENT	
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND ADVANCE RULING	
<u>ACAAR No. 155/2014-15.</u> <u>(Acts Cell – II/10398/2014)</u>	Dated:30.12.2015
<u>Present:</u>	<ol style="list-style-type: none"> 1. Thiru. S.K.Prabakar, 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)

REVIEW ORDER

Sub: TNVAT Act, 2006 & Rules 2007 – Section 48-A and Rule 12A- Clarification already advanced – Rate of tax in respect of Elastic Webbing – Review and re-clarification requested – Regarding.

Ref:

1. Proceedings of the Authority for Clarification and Advance Ruling ACAAR No.155/2013-14 (Acts Cell-II/10398/2014) dated 18.09.2014.
2. Review application from Tvl. Intimate Fashions (India) Private Ltd., Kanchipuram- 603 302 dated 01.10.2014.

Tvl.Intimate Fashions (India) Private Ltd., Kanchipuram-603 302. (TIN:33551602617), registered dealers in manufactures of inner wares for women in the files of Kancheepuram Assessment Circle, kancheepuram, have preferred application under section 48-A (4) of the TNVAT Act, 2006, before the Authority for Clarification and Advance Ruling, hereinafter to be referred as Authority, for review of the clarification already advanced vide proceedings first read above.

2. The rate of tax in respect of "Elastic Webbing" on purchase for use in manufacture of women's inner wares intended for export was clarified in proceedings of the Authority first read above as detailed below:

- (i). **Elastic Webbing are liable to VAT at the rate of 5% under Entry 67 of Part-B of First Schedule to the TNVAT Act, 2006; and**

3. The applicant-dealer have requested to review the above clarification and to re-clarify that the rate of tax in respect of "Elastic Webbing" in the light of section 5(3) of the CST Act, 1956 and decision of the Hon'ble Supreme Court in the case of State of Karnataka vs. Azad Coach Builders (P) Ltd., reported in 2010 (36) VST 1 (SC).

4. Section 48-A of the TNVAT Act 2006 provides that the Authority may review, amend, or revoke its clarification or advance ruling at any time for good and sufficient reason after giving opportunity of being heard to the affected parties. As per section 48-A (5), there is no limitation for reviewing, amending or revoking the earlier clarification or advance ruling. The applicant-dealers have requested for an opportunity of personal hearing. Accordingly he has been informed that the hearing is being scheduled 13.08.2014 @ 4.00 P.M. Thiru. Mohammed Shaffig, the counsel for the applicant dealers has appeared before the Authority on 13.08.2014 @ 4.30 P.M and represented on behalf of the applicant-dealers. At the time of hearing, the learned counsel, referring the decision of the Hon'ble Supreme Court in the case of State of Karnataka vs. Azad Coach Builders (P) Ltd., reported in 2010 (36) VST 1 (SC), has pointed out that the Hon'ble Supreme Court have outfield the "Same Goods Theory" in deciding a sale as if has been effected in the course of export under section 5(3) of the CST Act, 1956. The learned Counsel has added that the Hon'ble Supreme Court have held in this regard that there should be an inextricable link between the purchase of goods and export and the goods purchased must have been exported. The learned counsel has pointed out that the elastic webbing purchased by the applicant-dealers are to be exported along with the Women's inner wares exported to other countries and thereby complied with the test prescribed by the Hon'ble Supreme Court in the case of Azad Coach Builders (P) Ltd., The learned Counsel has finally prayed that the decision of the Hon'ble Supreme Court may

be applied to the present case and the rate of tax on Elastic Webbing on purchase for use in manufacture of women's inner wares for export may accordingly be clarified.

5.1. Section 5(3) of the CST Act, 2006 exempts on the penultimate sale of goods for purpose of export to other countries. The exemption from tax is being provided on penultimate sale is to intentionally avoid export of tax imposed under both Central and State Sales Tax Laws along with the goods exported to other countries. However, the export of locally imposed tax cannot be avoided on export of goods to other countries as the tax levied on sale/purchase of good prior to export outside the country is added as the hidden cost of the goods exported. But VAT System of Taxation finds a solution in the form of refund of tax paid on inputs for export, instead of exemption. This could be understood from section 18 of the TNVAT Act, 2006, which is relating to Zero rating on sale of goods coupled with the input tax credit as well as refund of input tax credit.

5.2. Section 18 (1)(i) and section 18(2) of the TNVAT Act, 2006 read as extracted below:

18. Zero-rating.-(1) The following shall be zero rate sale for the purpose of this Act, and shall be eligible for input tax credit or refund of the amount of the tax paid on the purchase of goods specified in the First Schedule including capital goods, by a registered dealer in the State, subject to such restrictions and conditions as may be prescribed:-

(i) A sale as specified under sub-section (1) or (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(ii) xxxxxxxxxxxxxxxxxxxxxxxx.....

(iii) xxxxxxxxxxxxxxxxxxxxxxxx.....

(2) The dealer, who makes zero rate sale, shall be entitled to refund of input tax paid or payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported as specified in sub-section(1), subject to such restrictions and conditions as may be prescribed.

As per section 18(1) of the TNVAT Act, 2006 read with section 18(2), input tax credit or refund is available to the extent of tax paid on purchase of the input goods from registered dealers inside the State for

export as such as well as for use in manufacture of other goods for export. Thus, the tax paid by a registered dealer –exporter on his penultimate purchase of inputs for export of goods as such falling under section 5(1) of the CST Act, 1959 is refundable to the dealer-exporter as per section 18(1)(i) read with section 18(2) of the TNVAT Act, 2006 as the export is treated as Zero rated sale. Similarly, the tax paid on purchase of input goods for a penultimate sale by a registered dealer as such to a registered dealer-exporter falling under section 5(3) of the CST Act, 1956 is refundable to the penultimate seller as per section 18(1) (i) read with section 18(2) of the TNVAT Act, 2006.

6.1 As correctly pointed out by the learned Counsel, the Hon'ble Supreme Court in the case of State of Karnataka vs. Azad Coach Builders (P) Ltd., reported in 2010(36) VST 1 (SC), have outfield the "Same Goods Theory" in deciding a sale as if has been effected in the course of export under section 5(3) of the CST Act, 1956; and resultantly have held in this regard that there should be an inextricable link between the purchase of goods and export and the goods purchased must have been exported. In the referred case, Tvl. Azad Coach Builders (P) Ltd., during 1988-89, had entered into a contract with TELCO for fabrication and supply of bus bodies as per the foreign buyer Tvl. Ashok Leyland Colombo, Ceylon, which were to be fitted on the Chasses and the buses were exported ultimately. Assessing authority had disallowed the claim of exemption pointing out that the goods exported were buses which were different from the Bus bodies sold; and the bus bodies were not exported as such. The Karnataka High Court, on appeal by the dealer, had allowed the appeal, holding that the dealer was eligible for exemption since the sale of bus bodies was in the course of export as specified under section 5(3) of the CST Act, 1956. On appeal by the State, the Supreme Court have held as above mentioned, pointed out that the bus bodies constructed and manufactured by the assessee could not be of any use in the local market, but were specifically manufactured to suit the specifications and requirements of the foreign buyer.

6.2. It is also pertinent to state here that the decision in the above referred case has been delivered by the Hon'ble Supreme Court as relating to the year 1988-89, when the taxing system prevailed under both the State and Central Sales Tax Laws was Origin based Taxation System. As already pointed out, in order to avoid export of

tax imposed under the State or Central Sales Tax laws, exemption is provided not only export sales under section 5(1) of the CST Act, 1956, but also on the penultimate purchase/sale of goods for export under section 5(3) of the CST Act, 1956. Whereas under VAT system of Taxation, the export of locally imposed tax on goods along with the export of goods is totally avoided by way of providing the refund of input tax paid on the penultimate purchase of goods for export as such or for use in the manufacture of other goods for export as per section 18(1)(i) read with section 18(2) of the TNVAT Act, 2006.

6.3. In the case on hands, the applicant-dealers are effecting purchases from registered dealers inside the State the Elastic Webbing for use in manufacture of women's inner wares for export to other countries. As per section 18(2) of the TNVAT Act, 2006, the applicant-dealers are entitled to get refund of input tax paid by them on their purchase of those goods, which are consumed or used in the manufacture of the women's inner wares that are exported as specified in section 18(1)(i) of the TNVAT Act, 2006. The decision by the Hon'ble Supreme Court in the case of State of Karnataka vs. Azad Coach Builders (P) Ltd., reported in (2010) 36 VST 1, is felt no longer applicable to the present case of the applicant-dealers, since they, being the exporters of the women's inner wares manufactured by using the elastic webbing, entitled to get refund of input tax paid on purchase of elastic webbing as provided under section 18(2) of the Act. It is therefore concluded that the clarification already issued in respect of Elastic Webbing needs no interference by application of the above referred decision.

7. It is accordingly clarified that the earlier clarification in ACCAR No. 155/2013-14 (Acts Cell-10398/2014) dated 18.09.2014, in respect of rate of tax on purchase of Elastic Webbing for use in manufacture of Women's inner wares for export, needs no interference and therefore reiterated.

Dated this, the 30 day of December, 2015

Sd/- R. Vayanaperumal,
Additional Commissioner (PR)

Sd/- K. Mahalingam,
Additional Commissioner (RP)

Sd/- S.K.Prabakar
Principal Secretary/
Commissioner of Commercial Taxes

To
Tvl.Intimate Fashions (India) (P) Ltd.,
Thirupporur,
Kottamedu High Road,
Nandhivaram Village,
Guduvancheri,
Kanchipuram-603 302.

Copy to:
The Assistant Commissioner (CT)
Chengalpet Assessment Circle

The Joint Commissioner (CT),
Chennai (South) 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 (RP)