

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

**ACAAR No.2/2019-20
V&A-6/967/2020**

Dated: 31.01.2020

Present:

1.Thiru M.A. Siddique, I.A.S.,
Principal Chief Secretary /
Commissioner of Commercial Taxes.

2.Thiru. K. Gnanasekaran,
Additional Commissioner (CT),
(Policy and Public Relations)

3.Thiru. C. Palani,
Additional Commissioner (CT),
(Review and Appeal)(FAC)

1	Name and address of the Applicant	:	Tvl. Paranthaman Rock Drills, 351, Sankari Road, Seetharampalayam Post, Tiruchengodu Taulk, Namakkal District – 637 209.
2.	Registration Certificate No.	:	TIN.No.33093182418 CST. 676259/06.10.99
3.	Assessment Circle	:	Tiruchengode Town Assessment Circle, Namakkal District.
4.	Date of application	:	06-01-2020
5.	Date of receipt of application	:	13-01-2020
6.	Clarification sought for	:	Rate of Tax on “manufacture of Water Borehole Drilling Rigs to be mounted on the Chassis supplied with Compressor by our customers”
7.	Date of Personal Hearing	:	24.01.2020
8.	Represented by	:	Thiru S. Rajasekaran, Advocate Authorised Representative.

ORDER

Tvl. Paranthaman Rock Drills, Tiruchengodu, Namakkal, Salem (TIN.No.33093182418), registered dealers in the files of Tiruchengodu town assessment Namakkal District 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 Tamil Nadu Value Added Tax Rules, 2007 (TNVAT Rules, 2007).

The applicant had filed application following the directions of Hon'ble Madras High Court division bench in Writ Appeal No. 4321/2019.

The Hon'ble Madras High Court Division Bench order in WA No. 4321 of 2019, dated 20.12.2019, "*remitted the matter back to the learned commissioner for deciding the said issue under Section 48A of the TNVAT Act once again, after hearing both parties viz., the assessee and the Revenue with a period of four weeks and a reasoned order may be passed by the Commissioner. Assessee's representative may appear before the Commissioner in the first instance on 03.01.2020 and the order may be passed before the next date of hearing and produced before this Court on 03.02.2020. List on 03.02.2020.*"

Accordingly, the dealer was requested to appear for the personal hearing along with required details before the Authority for Advance Ruling and Clarification on **24.01.2020 (Friday) at 11.00 am at Commissioner's Chamber, Office of the Commissioner of Commercial Taxes, 2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005** and to put forth their case.

On the day of hearing, Authorised Representative Thiru K. Rajasekaran, Advocate appeared before the Committee and put forth their contentions with reference to the commodity mentioned against Sl. No. 4 [Rate of Tax on "**manufacture of Water Borehole Drilling Rigs to be mounted on the Chassis supplied with Compressor by our customers**"] of the Form VV Application.

Further, the Counsel argued that the rigs and drills sold by the applicant and mounted on chassis supplied by the customer is a capital goods and therefore is liable to be taxed at 4% under Entry 25 Part B of First Schedule to TNVAT Act, 2006, at the rate of 4% upto 11.07.2011 or at the rate of 5% from 12.07.2011.

The authorized representative requested time to file written argument, hence time was given upto 27.01.2020. On 28.01.2020, the authorized representative filed the written arguments and made the following submissions:

The entire unit assembled in the process of manufacture by us is certainly a Machinery which per se finds in Entry 25 of Part B of the 1st Schedule to the TNVAT Act - "Capital Goods as described in Section 2(11) of the TNVAT Act, 2006". The provisions relevant for the purpose of the present case were extracted from TNVAT Act in the letter.

Further he also quoted the following judgment in support of his argument.

The Hon'ble Apex Court in Sonebhadra Fuels (2006) 147 STC 594 has held that the words '**processing, treating or adapting**' in the definition would imply that 'manufacture' covers not only activities which bring into existence a new commercial commodity but also those which do not result in the bringing into existence a different article.

In J.K.Cotton Spg & Wug Mills (1965) 16 STC 563 (SC), THE Hon'ble Supreme Court has held that the term 'manufacture' is to be given a wide and liberal interpretation and the term should normally encompass the entire process of activity involved in the manufacture. Even activities so integrally connected without which the process or activity would be commercially inexpedient would fall within the meaning of the term 'manufacture'.

Finally following prayer was placed before the advance ruling authority.

The term Capital Goods is itself of a very wide amplitude in the sense that it includes finished products also in it, therefore inputs which are otherwise independent finished commodities may entail to be a capital good for the purpose of yet another independent commodity. It is in this context that we lay emphasis on the fact that our Rigs which dig the bore wells in agricultural lands & others are an indispensable input that aid in the extraction of soil or water as the case may be. The mechanized machinery is an essential item in the whole process of digging the bore well and extracting the earthen soil or water as the case may be. Hence to lay a narrow interpretation on the term manufacture would not advance the objects of the Legislative wisdom which enacted the above provisions.

It is also pertinent to note that 'processing' of goods is included as an activity eligible for input tax credit in terms of section 19(2)(ii) of the Act, therefore when the enactment itself has recognized the need based approach to various activities /

industries, it would be doing violence to the statute if any other narrow interpretation is adopted.

Hence it is respectfully prayed that the Learned Authority constituted in terms of Section 48-A of the TNVAT Act, 2006 may clarify the rate of tax to falling under Entry 25 of Part-B of the 1st schedule to the Act in the circumstances of the case.

We have examined the provisions of the law and the submissions of the applicant. Undoubtedly, Water Borehole Drilling Rigs mounted on the Chassis supplied with Compressor by their customers, are machinery falling within its definition in economic theory in as much as, it is used for continuous production of services. However, the capital goods defined in sub-section 11 of Section 2 of the TNVAT Act, 2006, restricts capital goods to such plant and machinery, equipment etc. that are used in this State, for the purpose of manufacture, processing, packing or storage of goods, in the course of business.

In the instant case, rigs are undoubtedly plant and machinery or equipment but they are used by the recipient of the rigs i.e., the customers of the applicant, for the purpose for drilling of bore wells which is neither manufacture, nor processing, nor packing, nor storing of goods. Even an expanded and liberal interpretation of the term manufacture that covers all activities associated with the process of manufacture of goods as contended by the applicant by citing case laws, would not cover the act of drilling of earth that the rigs is used for, as no goods are produced in the process. The process of drilling of bores using rig would clearly fall in the category of service, as opposed to manufacture of any economic good. At best, the rigs can only be considered as capital goods and machinery used for providing the service of drilling of bore wells. Therefore, the rigs supplied by the applicant cannot be treated as capital goods within the definition of Section 2(11) of the Act.

In view of the above discussion, the applicant is clarified that, Entry 25, Part B of First Schedule to TNVAT Act, 2006 will not be applicable in this case. Since, there is no specific entry relating to **Water Borehole Drilling Rigs to be mounted on the Chassis supplied with Compressor by their customers**, hence it is taxable at 12.5% or 14.5% as the case may be under Entry 69 [*residuary Entry - any other goods, not specified in any of the Schedules*], Part C of First Schedule to TNVAT Act, 2006.

Dated this the 31st day of January 2020.

Sd/- C. Palani
Additional Commissioner(R&A)(FAC)

Sd/- K.Gnanasekaran
Additional Commissioner(P&P)

Sd/- M.A. Siddique,
Principal Secretary /
Commissioner of Commercial Taxes

To
Tvl. Paranthaman Rock Drills,
351, Sankari Road,
Seetharampalayam Post,
Tiruchengodu Taulk,
Namakkal District – 637 209.

Through:

Thiru. S. Rajasekaran, Advocate
Authorised Representative,
No. 51/C-1, Prasanth Builders,
Near Jeevan Super Market,
10TH Avenue, Ashok Nagar,
Chennai – 600 083.

Copy to:
The Assistant Commissioner (ST)
Tiruchengode Town 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 Intelligence and LTU.

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 //


31/1/2020
State Tax Officer