

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

Review of ACAAR No.22/2012-13

Dated:29.06.2017

(Acts Cell-II/18794/2016)
(Acts Cell-II/2512/2017)
(Acts Cell-II/6545/2017)
(Acts Cell-II/15238/2017)
(Acts Cell-II/16730/2017)
(Acts Cell-II/16921/2017)
(Acts Cell-II/18118/2017)
(Acts Cell-II/18119/2017)



- Present:**
1. Dr. C. Chandramouli, I.A.S.,
Additional Chief Secretary / Commissioner of Commercial Taxes.
 2. Thiru. A. Sarvar Allam,
Additional Commissioner (CT), (Public Relations)(FAC)
 3. Thiru. K. Gnanasekaran,
Additional Commissioner (CT), (Revision Petitions)(FAC)

Sub: TNVAT Act, 2006 - Application under section 48-A(4) seeking review of clarification on the rate of tax on "**100% Viscose Staple Fibre Hank Yarn**" - Reg.

- Ref:**
1. Proceedings of the Authority for Clarification and Advance Ruling ACAAR No.22/2012-13 (Acts Cell II/16838/2012) dated 14.02.2013.
 2. Review Application from Tvl. Aakavi Spinning Mills, Erode-5 (Acts cell II/18794/2016) dated 15.07.2016
 3. Review Application from Tvl. Shrie Harivallabi Spinners Pvt Ltd., Erode - 9 (Acts cell II/2512/2017) dated 27.01.2017
 4. Review Application from Tvl. Victory Spinning Mills Pvt Ltd., Namakkal - 637 304 (Acts cell II/6545/2017) dated 06.03.2017
 5. Review Application from Tvl. Sri Vinayakha Spinning Mills Private Ltd., Erode - 8 (Acts cell II/15238/2017) dated 25.05.2017
 6. Review Application from Tvl. Prince Yarnn India Limited, Erode - 8 (Acts cell II/16730/2017) dated 08.06.2017
 7. Review Application from Tvl. Chola Spinning Mills Pvt Ltd, Namakkal - 8 (Acts cell II/16921/2017) dated 09.06.2017

8. Review Application from Tvl.Mouli Spinners Limited, Erode -8 (Acts Cell II/18118/2017) dated 21.06.2017
9. Review Application from Tvl.Sri Santhanalakshmi Spinners Private Limited, Erode -8 (Acts Cell II/18119/2017) dated 21.06.2017

ORDER

On application by Tvl. Rajaguru Spinning Mills Private Limited, Erode - 638 004, it was clarified in ACAAR No.22/2012-13 (Acts Cell II/16838/2012) dated 14.02.2013 in the reference 1st cited as follows:

"100% Viscose Staple Fibre (VSF) Hank Yarn" sold by the dealer is taxable at 5% under Entry 3(a) of Part b of the First Schedule to the TNVAT Act, 2006.

2. The Assistant Commissioner (CT)(FAC), Tiruchengode Rural Circle issued notices to Tvl.Harivallabi Spinners Pvt Ltd., Erode - 9 for the assessment years 2012-13 to 2015-16 proposing reject the claim of the assessee based upon the above clarification issued by this authority. The Hon'ble High Court of Madras disposed of these Writ Petitions Nos 20349 to 20352 of 2016 and W.M.P. Nos. 17470 to 17473 dated 16.06.2016, with the following direction:

"...there will be a direction to the petitioner to file a review application before the first respondent to review the clarification dated 14.02.2013 and if such review application is filed, the same shall be heard along with the other connected review filed by the Deventhira Spinners Private Ltd.,"

In similar petitions filed by Tvl.Victory Spinning Mills Private Limited, the Hon'ble High Court of Madras in W.P.Nos 19774 to 19777 of 2016 dated 13.06.2016 has also directed to file a review application before the Authority for Clarification and Advance Ruling to review the clarification dated 14.02.2013. Based on the above directions by the Hon'ble High Court of Madras, both the dealers have filed review application vide applications in reference 3rd and 4th Cited.

3. Tvl. Aakavi Spinning Mills, Erode-5, Tvl. Sri Vinayakha Spinning Mills Private Ltd., Erode - 8, Tvl. Prince Yarnn India Limited, Tiruchengode - 4, Tvl.Chola Spinning Mills Pvt Ltd, Namakkal - 8, Tvl.Mouli Spinners Limited, Erode -8 & Tvl.Sri Santhanalakshmi Spinners Private Limited, Erode -8 have also preferred review

applications on the orders passed by this authority in the proceedings 1st cited.

4. Since all the above review applications from reference 2nd to 9th cited have been filed on the clarification issued by this authority in the reference 1st cited, these applications were considered together and a common order is passed.

5. The applicant-dealers sought for personal hearing and accordingly they were heard on 16.06.2017. Thiru. S. Rajasekar, Advocate & Counsel of the applicant-dealers, Tvl. Aakavi Spinning Mills, Thiru. S. Samidurai, VAT Practitioner and authorised representative of Tvl. Chola Spinning Mills Private Limited and Thiru. P. Rajavelu, Counsel of the applicant-dealers, Tvl. Sri Vinayakha Spinning Mills Private Ltd., appeared for the hearing on 16.06.2017 and filed written statements along with documentary evidences and prayed to review the clarification issued by this authority in ACAAR No.22/2012-13 (Acts Cell II/16838/2012) dated 14.02.2013 on the following grounds and to clarify that 100% Viscose Staple Fibre Hank Yarn is classifiable under Entry 44 of Part-b of Fourth Schedule to the TNVAT Act, 2006 and eligible for exemption.

Grounds stated by Tvl.Chola Spinning Mills Pvt Ltd, Namakkal - 8

"1. It is no doubt that "all types of yarn (other than those specified in the Fourth schedule) is taxable at 5% under entry 3(a) of Part B of the I schedule to the TNVAT Act 2006. "Hank yarn" being an entry enumerated under item No.44 of the Fourth Schedule of Part B of the Fourth Schedule is exempted from levy of tax. The fact that the the word "Hank yarn" is not prefixed with any words "cotton" it would mean "**all types of yarn packed in hank form**" since the suffix of the word "yarn" after the word "Hank" as available in the Fourth schedule encompass "**all types of yarn" packed in the form of Hank**". So also, the word "Hank" pre fixed before the word "yarn" is not descriptive of any commodity or goods but **descriptive of the method of packing** i.e., in Hank form. The legislative intend to enumerate the above entry under Fourth schedule is to include "all types of yarn" packed in hank and nothing more.

2. One of the reason given in the earlier Advance Ruling in A.C.A.A.R.22/2013-13 dated 14-02-2013 against which the present

review petition filed, it was stated therein that the intention of the Government is to help the handloom sector by granting exemption on cotton yarn in hank only. But the packing notifications issued under the Textile (Development & Regulation) order 2001 issued by the Ministry of Textiles under section 3 of the Essential Commodities Act 1955 nowhere there in it was mentioned with the description of the goods as "cotton yarn" but the word "yarn" only is available. Therefore the reasons as to the intention of the Government is to help the handloom sector, to hold that 100% Staple Fibre yarn in hanks is taxable at 5% is not correct. It is settled law that the construction of a particular expression in one statute need not follow the construction of the same expression in the other statute and we have to take into consideration language used, the object of the Act, the preceding provision of law, the mischief which was sought to be remedied and the intention of the legislature in enacting the provision.

Under the provisions of the TNVAT Act, the intention of the stage legislation is to levy tax at 5% all types of yarn other than those specifically mentioned in the fourth schedule, according to which there is enumeration of entry in item no.44 of part B of the Fourth schedule as "Hank yarn" in other words "yarn packed in hank" which also mean **"all types of yarn packed in hank"**.

3. Under the Central Excise Provisions, as per the amendment given vide notification dated 28-09-1963 issued under rule 8(1) it was amended that **"the term "hanks" shall mean hanks which do not contain more than 1000 meters of yarn in plain (straight) reel"** The word "hank" has not been defined anywhere in the Act. One of the dictionary meaning given to the word "hank" is "circular loop or coil". Yarn spun other than wholly of cotton can also be packed in Hank form. Under the advanced technology in textile industry, not only cotton yarn packed in hanks but also Art silk yarn and another mixed yarn packed in hank form become the yarn used by the Hand loom sector. Therefore **any yarn packed in Hank form** i.e., in circular loop or coil which do not contain 100 meters of yarn in plain (street reel) as described under the Central Excise provision and also under the Textile Regulation order would fall under head of "Hank yarn" as enumerated under item no.44 of of Part B of Fourth

4. Therefore it cannot be understood that the word "Hank yarn" enumerated under item no. 44 of Part B of I schedule to the Act is having any restricted meaning of cotton yarn packed in Hank form but it has an extended meaning of **"any yarn or all types of yarn packed in Hank form"** Under item no.3(a) of Part B of I schedule to the Act, the entry runs as "All types of yarn" (other than those specified in the Fourth schedule) The principle of ejusdem generis can be applied to a case, has been explained by the Supreme Court in the decision (Amar Chandra Chakraborty Vs. Collector of Excise, Government of Tripura). The Supreme Court has observed in that case as follows :

"The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent ..."

In the present case of the issue, under entry 3(a) of Part B of I schedule to the Act, wherein it is enumerated "all types of yarn followed by the words in bracket (other than those specified in the Fourth Schedule) and the items specified in the Fourth schedule "Hank yarn" only is available, the question will arise here in the Fourth schedule, what type of Hank Yarn? Whether the yarn is cotton yarn, SF yarn or other yarn. The answer has to be obtained only by interpreting the law with the aid of ejusdem generis theory as observed by the judicial forums. In 'Statutory Interpretation' Rupert Cross says:

...The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted....

Therefore, it could be construed that there is omission of the word "all types" before the word "hank yarn" in the entries enumerated in Fourth Schedule. According to the rule of beneficial construction, it is an accepted principle in taxation that if two or more interpretations are possible, that which favours the assessee

should be preferred, even if such advantage is not intended by the law but a reasonable construction of the statute entitles him to it."

Grounds stated by Tvl. Aakavi Spinning Mills, Erode-5

- "(viii) Originally the CCT vide Lr.No.VAT cell/6230/2007 (VCC No.221)P dated 29.03.2007 issued to SIMA, Coimbatore had clarified that Hank Yarn includes hemp yarn manufactured by use of raw materials other than cotton also... Thus notwithstanding the absence of sec-48A during that relevant time the clarification dated 29.03.2007 holds good and valid in law.
- (ix) For the first time End usage of the commodity was projected as an yard stick in clarification issued by CCT vide Lr.No. VAT Cell/43285/2007 (VCC No.1265) dated 19.09.2007. It held polyester yarn, VSF yarn and Blended yarn are not used for the handloom sector and therefore would fall under purview of Entry 3(a) of 1st Schedule to the TNVAT Act. In the Entry 3(a) of 1st Schedule to the TNVAT Act, there is a conscious exclusion to the 4th Schedule of the Act has been provided. This exclusion already sets forth the position that Hank yarn which finds place in Entry 44/Par-B/4th Schedule is outside the ambit of taxation. But the scope of the clarification with regard to the end usage only on the handloom sector was outside the powers and jurisdiction conferred on the CCT, as the same amounts to legislating contrary to the entry as found in the schedule to the Act
- (xi) The distinction between yarn used by the power loom sector vis-à-vis the handloom sector issued in clarification ACAAR 22/2012-13 dated 14-02-2013 is apparently based on the Textiles (Development and Regulation) Order, 1993, an order issued u/s 3 of the Essential Commodities Act,1955 which we submit is highly irrelevant factor for consideration of taxability under the TNVAT Act, 2006.
- (xii) The TNVAT Act, 2006 is a self-contained code with earmarked legislative spheres, there can be no overlapping of two different statutes for the determination of the rate of tax unless expressly stated by either of the statutes. Therefore "Hank Yarn"

away by certain factors construed by another statute. Thus , an artificial distinction was sought to be created with reference to the usage of the commodity which was wholly unwarranted and uncalled for.

- (xiii) It is now well settled position that Special law will always prevails over General law and therefore a Specific Entry would override a General Entry. Thus the existence of Entry 44 relating to Hank Yarn under Fourth Schedule cannot provide for any artificial or imaginary condition that runs contrary to legislative wisdom

.....

- (xv)..... Hon'ble State Level Authority failed to note that a commodity cannot be construed beyond the scope of what the legislative Entry in the Schedule provides for: when Entry 44 of Fourth Schedule provides for the words "Hank Yarn" making no distinction on the usage of the commodity, reading something extra into the same would only be doing violence to the said Entry not permissible under Law."

Grounds stated by Tvl.Victory Spinning Mills Pvt Ltd ,Namakkal-4

"3)under Entry No.44 of Part B of the Fourth Schedule, the Commodity namely "Hank Yarn" is provided as exempted goods and accordingly, no VAT is required to be collected on the sale of Hank Yarn. The commodity (Hank Yarn) is having a distinct Commodity Code No.744. Whereas, yarns other than hank yarn are falling under different Commodity Code Numbers depending up on their nature and fibre. However, hank yarn alone is classified under Commodity Code No.744 irrespective of any fibre it is made out of.

4) On a distinct and combined reading of both the Entry No.44 of Part-B of Fourth Schedule and Entry No.3(a) of Part-B of First Schedule, it could be seen that the "Hank Yarn" is fully exempted and not liable for any tax under TNVAT... Commissioner of Commercial Taxes in clarification vide Lr.No.VATcell/6230/2007 (VCC No.221)P dated 29.03.2007 has clarified that Hank Yarn includes hemp yarn manufactured using raw materials other than

cotton yarn also exempted from VAT u/E 44 of Part-B of Fourth Schedule to the TNVAT Act, 2006 w.e.f.01.01.2007

5) ... However, the authority added in clarification that the hank yarn under this entry meant only Cotton Hank Yarn and not other types of hank yarns which amounts to be own interpretation and not supported by law.

6)On a perusal of Entry 44 of Fourth Schedule it would reveal that when no strings or conditions have been attached to the above entry, Hank Yarn in all its forms would therefore is eligible for unconditional exemption irrespective of the fibre it is made out of.

7)the commodity dealt by us is "VSF Yarn in Hank" falls under the category of Entry 44 of Fourth Schedule whereas Entry 3(a) of Part-B of First Schedule reads "all type of yarn other than those specified in Fourth Schedule" has no relevance as far as the hank yarn of us is concerned

8) In legal Maxim of 'Generalia Specialibus non derogate' means that special law will always prevail over a general law and that when a specific entry is made available it would alone override the general entry. It is well established in trade circles that hank yarn even made out of other than cotton is also used in the manufacture of handloom materials. Most of the hank yarn produced by us was purchased by the Handloom Development Corporation (HLDC) and the said HLDC has provided specific purchase orders to supply hank yarn only in order to make the yarn supplied to the societies and other such entities attached with the HLDC. Hence, when it is in the form of hank irrespective of nature of fibre whether it is Cotton, Polyester, Viscose or Blends of Fibres, merely on the fact that it is made available for sale as hank yarn, it is fully exempted under Entry 44 of Part B of Fourth Schedule.

The learned Appellate Assistant Commissioner (CT), Madurai (North) observed that when there is no specific word polyester or cotton in the notification, the reduction of rate of tax to 2% is applicable to both cotton hank yarn and polyester hank yarn. Furthermore, the earlier notification in G.O.P.No.1316/CT & RE

Gazette dated 07.10.1988 effective from 07.10.1988 reads as follows

"Reduction in rate from three percent to two percent on sale, by any dealer of cotton hank yarn plain reel"

The above notification was already cancelled and the fresh notification dated 17.07.1996 has been issued in which, the word 'cotton' has been deleted. As such, the intention of the Government is very clear that all kinds of hank yarn including polyester hank yarn is liable to reduced rate of 2%....."

From the above mentioned observations of the TN STAT, Additional Bench, Madurai, it is made clear that when it is a hank yarn, irrespective of fibre it is made out of it, it is eligible for the exemption under Entry 44 of Part-B of Fourth Schedule to the TNVAT Act, 2006.

.....

.....

17) Hence, on the above grounds, we wish to further submit as follows.

B. When the Entry 44, simply says that "Hank Yarn" is an exempted goods under Section 15 of the TNVAT Act, 2006, going in to the details whether it is manufactured out of cotton or any other fiber is an administrative excess and therefore, its amount to be 'abintiovoid'."

6. This committee considered the above review applications and the written grounds and documents filed along with the application carefully and examined the issue with reference to the Schedules and provisions of TNVAT Act, 2006, Rules made thereunder and notifications issued under the Act. The contentions raised by the Advocates and authorised representatives of the applicant-dealers at the time of hearing were also considered.

7. The contentions made in the review application are discussed as follows:

7.1. Hank yarn falls under Entry 44 of Part-B of Fourth Schedule to TNVAT Act and hence not liable to tax. "All types of Yarn (other than

those specified in Fourth Schedule)" fall under Entry 3(a) of Part-B of First Schedule of the Act and liable at 5% VAT. The point to be decided in the above review applications is whether viscose staple fibre hank yarn would fall under Entry 44 of Part-B of Fourth Schedule or Entry 3(a) of Part-B of First Schedule of the Act.

7.2. There is no dispute in the fact that hank yarn is used exclusively in handloom sector. In the textile market and for common public, handloom sector is synonymous with cotton textiles. With the object of promoting handloom sector only, hank yarn is exempt from tax. Therefore, while interpreting Entry "Hank yarn", the above market and public common knowledge and practice has to be applied. With this kind of interpretation, the commodity "Hank yarn" has to be construed as cotton hank yarn only. To consider any synthetic yarn as hank yarn, notwithstanding its real nature of packing in hank form, would be against popular sense of the term "hank yarn".

7.3. Based on the above logic only, it has been clarified in ACAAR 22/2012-13 dated 14.02.2013 that viscose staple fibre hank yarn do not fall under the Entry "Hank yarn" and the yarn would fall under Entry 3(a) of Part-B of First Schedule of the Act.

7.4. According to the law evolved in commodity taxation, words in entries of Schedules, etc., must be construed not in any technical sense nor from the scientific or botanical point of view but as understood in common parlance. In the popular sense meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Specially in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, these words and expression should be construed in the sense in which they are understood in the trade by the dealer and the customer where the goods are marketable [*Indian Aluminium Cables Ltd Vs. Union of India*, [1987] 64 STC 180 (SC); *State of Tamilnadu Vs. Muthu Agencies*, [1992] 85 STC 561 (Mad)].

7.5. Where no definition is provided in the statute itself, for ascertaining the correct meaning of fiscal entry, reference to dictionary is not always safe. The correct guide is the context and the trade meaning. [*Collector of Central Excise Vs. Krishna Carbon Paper Co.*, [1989] 72 STC ...].

people conversant with the subject-matter with which the statute is dealing would attribute to it.

7.6. *In Commissioner of Sales Tax Vs. Jaswant Singh Charan Singh, [1967] 19 STC 469 (SC); Dy. C.S.T vs. G.S. Pai & Co., [1980] 45 STC 58 (STC)* the Supreme Court adopted the following principles in the matter of construction of entries in statutes like the Sales Tax Acts:

"(1) If a statute uses the ordinary words in every day use, such words should be construed according to their popular sense.

"(2) If a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is biased on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adopted to the fitness of the matter of the statute."

7.7. According to the above referred law relating to interpretation of entries applying popular sense meaning to the entries of the schedule, 'hank yarn', can be construed only as cotton hank yarn used in handloom. Similarly, the statutory object of giving exemption to hank yarn is to promote handloom sector, which is producing primarily cotton textiles. As per the law laid down by the Supreme Court in the above case law, the exemption so given to hank yarn can only be considered for cotton hank yarn and not for other man made filament yarn.

7.8. If the technical aspect of type of packaging of yarn only is considered as the deciding factor for interpreting the entry of the schedule, then prevalent industrial practice of converting hank yarn into cone yarn is also to be taken note of. In such circumstances, all types yarn sold in hank packaging need not be used in handloom sector. There is always a possibility of converting VSF hank yarn into cone VSF yarn and use it in mill/power loom sector. In such circumstances, the very basic object of granting exemption to hank yarn gets defeated. Therefore, the commodity, "Hank yarn" under Entry 44 of Part-B of Fourth Schedule to TNVAT Act has to be interpreted in a holistic manner taking consideration of the object of granting exemption, trade and popular meaning of the goods and the ultimate usage of the product. Such comprehensive interpretation of the above Entry would restrict the meaning of the entry only to cotton hank yarn.

8. In view of the above discussion, this committee decides that there are no fresh and valid grounds to review the clarification already

issued by this authority in ACAAR 22/2012-13 (Acts Cell II/16838/2012) dated 14.02.2013. Consequently, the clarification already issued in the above proceedings is reiterated and all the review applications are rejected.

Dated this the Twenty-ninth day of June 2017.

Sd/- A. Sarvar Allam,
Additional Commissioner (PR)(FAC)

Sd/- K. Gnanasekaran,
Additional Commissioner (RP) (FAC)

Sd/- Dr.C. Chandramouli, I.A.S
Additional Chief Secretary/
Commissioner of Commercial Taxes

To

1. Tvl. Aakavi Spinning Mills Private Limited,
2A, Pichankadu,
B.P. Agraharam, Erode - 5
2. Tvl.Shrie Harivallabi Spinners Pvt Ltd.,
No.3/225, Sankagiri Main Road,
Vediyarasampalayam,
Pallipalayam, Erode - 638 009
3. Tvl.Victory Spinning Mills Pvt Ltd.,
24/2-A, Sankari Main Road,
Uppupalayam, Modamangalam PO,
Tiruchengode Talik, Namakkal District - 637 304
4. Tvl.Sri Vinayakha Spinning Mills Private Ltd.,
SF No.144/2, Kumarapalayam Main Road,
Veppadai, Elanthakuttai (P.O)
Erode - 638 008
5. Tvl. Prince Yarnn India Limited,
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Pallipalayam Agraharam (PO)
Erode - 638 008
6. Tvl.Chola Spinning Mills Pvt Ltd, Namakkal - 8
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Elanthakuttai (P.O),
Veppadai, Erode - 638 008
7. Tvl.Mouli Spinners Limited,
1/14 Sankari Main Road,

8. Tvl.Sri Santhanalakshmi Spinners Private Limited,
464-465 – Patharai, Near Veppadai,
Pallipalayam, Erode – 638 008

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Periya Agraharam Assessment Circle

The Assistant Commissioner (CT)
Tiruchengode (Rural) Assessment Circle

The Joint Commissioner (CT),
Salem Division.

The Joint Commissioner (CS)

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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//

K. L. Narayanan
29.6.17
Commercial Tax Officer