

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

ACAAR No.44/2014-15.
(Acts Cell-II/37751/2014)

Dated:25.02.2016

ACAAR No.45/2014-15.
(Acts Cell-II/37752/2015)

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

1	Name and address of the Applicant	:	Tvl. GKS Industries, 31, A/3, SIDCO Ambattur Industrial Estate, Chennai -600 098.
2.	Registration Certificate No.	:	TIN.33101360122/CST 46931
3.	Assessment Circle	:	Villivakkam Assessment Circle
4.	Date of application	:	11-12-2014
5.	Date of receipt of application	:	11-12-2014
6.	Clarification sought for	:	Rate of Tax on 1. Steel Scaffolding Materials [ACAAR No.44/2014-15] 2. Steel Centering Materials [ACAAR No.45/2014-15]
7.	Date of Personal Hearing	:	10-04-2015
8.	Represented by	:	Thiru. HARIPRASAD, Sole Proprietor. Tmt. Aparna Nandakumar, Advocate & Authorized Representative

COMMON ORDER

Tvl. GKS Industries, 31, A/3, SIDCO, Ambattur Industrial Estate, Chennai -600 098. (TIN.33101360122/CST 46931) registered dealers in the file of Villivakkam Assessment Circle, have preferred applications under section 48-A (4) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006) before the Authority for Clarification and Advance Ruling, hereinafter to be referred as "Authority", for review of the clarification already issued vide proceedings ACAAR No.44/2014-15, Acts Cell-II/22513/2014, dated 08.09.2014 and ACAAR No.45/2014-15, Acts Cell-II/22514/2014, dated 08.09.2014. Since issues involved in both the review applications are same, these applications were considered together and a common order is passed.

2. On applications by the applicant-dealers, clarifications were issued under Sec. 48-A of TNVAT Act, 2006 in ACAAR No.44/2014-15, Acts Cell-II/22513/2014, dated 08.09.2014 and ACAAR No.45/2014-15, Acts Cell-II/22514/2014, dated 08.09.2014 holding that "**Steel Scaffolding Materials**" and "**Steel Centring Materials**" respectively are liable to VAT at 14.5% under the residuary Entry 69 of Part-C I Schedule to TNVAT Act, 2006.

3. In the present review applications filed on the above clarifications, the dealers have prayed to review the ruling already made, contending that the above goods would be declared goods falling under Iron and Steel as specified u/s 14 (iv) of the CST Act, 1956, attracting levy of tax at 5% under entry 41 of Part-B of I Schedule to TNVAT Act, 2006. In the review applications, the dealers have contended that Steel Scaffolding materials and Steel Centring materials are not different commodities from the steel pipes, steel sheets, channels etc., from which it is made. There is no manufacturing process involved. The Scaffolding materials are

obtained by the process of merely cutting of steel pipes and joining by way of welding, threading or by couplers to obtain the desired length/height. The centring materials are obtained by the process of merely cutting, bending and welding steel sheets/angles/sections of various thicknesses to obtain the desired width. Thus the steel items do not lose their original character in the above process. Hence, it has been contended that the rate of tax on such Steel Scaffolding materials and Steel Centring materials ought to be only 5% as they retain the character as declared goods.

4. In this context, the applicant-dealers have relied on the judgement of the Hon'ble Supreme Court in the case of Hindustan Poles Corporation vs Commissioner of Commercial Taxes, Calcutta 2006 (133) ECR 0190 (SC), wherein the Hon'ble Court considered the question as to whether the process of joining three pipes with one another by welding was a "manufacture" and whether the resultant poles was commercially a different product. The question arose in the context of the Central Excise Act, 1944. The Hon'ble Supreme Court held that the process carried out did not change the basic identity or original character of M.S. Welded pipes to make it a new marketable product leading to manufacture and that the activity of merely joining three pipes of different diameters, can by no stretch of imagination, be brought within the category of manufacture.

5. The applicant dealers sought personal hearing to explain the facts and legal aspects relating to the issue and the hearing was fixed on 10/4/2015. Tmt Aparna Nandakumar, Advocate and Authorized Representative of the dealers appeared for the hearing and explained the manufacturing process involved in the products, with photographs and reiterated the point that the iron and steel materials used for the manufacture of scaffolding and centring materials do not lose their

identity and therefore these goods should continue to be treated as declared goods.

6. The applicant dealers made further written representation on 5/1/2016 bringing the fact that the same goods are liable at 5% in the States of West Bengal, Kerala and Haryana. They have also brought to the notice of the Authority that Principal Secretary and Commissioner of Commercial Taxes, who is one the members of the Authority has issued a clarification in his Letter No.Q4/19193/2015 dated 14.08.2015 stating that scaffolding/shuttering materials fall under the broader category of steel structures and the same has been listed as Entry V in Section 14 (iv) of the CST Act, 1956.

7. The Authority carefully considered the grounds of review applications, arguments advanced by the learned advocate and authorised representative of the applicants and the written submissions made thereafter with reference to the clarifications already issued and the provisions of TNVAT Act, 2006, Schedules to the Act and other connected documents and records. Normally, clarifications issued under Section 48-A of TNVAT Act would not be taken up for review. In case, any new facts or law that were relevant to the issue but not considered at the time of issue of the clarification are brought out in the review application, then only such review application is maintainable. The clarifications challenged in the present review applications have been issued on the ground that though iron and steel is used in the manufacture of scaffolding and centring materials, the finished products are different from the raw materials, i.e., iron and steel. The applicant dealers have now brought to the notice of the Authority of the case law laid down by the Hon'ble Supreme Court in the case of Hindustan Poles Corporation vs Commissioner of Commercial Taxes, Calcutta 2006 (133) ECR 0190

(SC), in similar set of facts. In the case of the applicants, the activity of converting steel pipes and sheets into scaffolding and centring materials was held to be manufacture leading to emergence of new commercial commodity, in the earlier rulings. In the above case law, the Hon'ble Supreme Court has held that welding of pipes of three different diameters one with the other would not amount to manufacture of stepped transmission poles, since the basic identity or original character of M.S. Welded Pipes do not change in the process. Raw materials used and the manufacturing process involved in both the cases are almost same. Similarly, in the case of the applicants also, the original character or identity of steel pipes, sheets, angles, rods, sections do not change after cutting/welding/treading/bending to convert them into scaffolding and centring materials. Therefore, the ground relied on by the Authority that there was manufacturing activity involved in the conversion process of iron and steel goods and the scaffolding and centring materials are commercially different commodities from iron and steel needs to be reviewed, in the light of the above Supreme Court judgment.

8. Further, the Principal Secretary and Commissioner of Commercial Taxes has issued a clarification in Letter No.Q4/19193/2015 dated 14.08.2015, in the context of applicability of transit pass, holding that scaffolding/shuttering materials fall under the broader category of steel structures and the same has been listed as Entry V in Section 14 (iv) of the CST Act, 1956 and therefore transit pass is mandatory for their inter-State movement, as prescribed in Sec. 70 of TNVAT Act, 2006. The above said clarification issued by the Principal Secretary and Commissioner of Commercial Taxes holding steel scaffolding/shuttering materials as declared goods also necessitates the review of the clarifications under review.

9. As discussed above, the applicant dealers have brought in new facts and law in their review applications which are very much relevant to the clarifications already issued. Therefore, the review applications are maintainable. The criteria laid down by the Hon'ble Supreme Court to determine the process of manufacture of new commodity in the case of Hindustan Poles Corporation vs Commissioner of Commercial Taxes, Calcutta 2006 (133) ECR 0190 (SC) are squarely applicable to the case of the applicants. Further, the department cannot take two different stands on the classification of goods for different compliance purposes. Therefore, the view taken by the Principal Secretary and Commissioner of Commercial Taxes in his Letter No.Q4/19193/2015 dated 14.08.2015 stating that steel scaffolding/shuttering materials are declared goods needs to be followed, as it has indirectly followed the legal principle laid by the Hon'ble Supreme Court in the above stated case law.

10. In view of the above facts and legal position, the review applications filed in ACAAR No.44/2014-15, Acts Cell-II/22513/2014, dated 08.09.2014 and ACAAR No.45/2014-15, Acts Cell-II/22514/2014, dated 08.09.2014 are allowed and in supersession of the above rulings, it is clarified that "**Steel Scaffolding Materials**" and "**Steel Centring Materials**" are declared goods, as long as they maintain the original character and identity of iron and steel items from which they are made of and liable to tax at 5% under Entry 41 of Part-B of I Schedule to TNVAT Act, 2006.

Dated this the Twenty Fifth day of February 2016.

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

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

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

To

Tvl. GKS Industries,
31, A/3, SIDCO
Ambattur Industrial Estate,
Chennai -600 098.

Copy to:

The Assistant Commissioner (CT),
Villivakkam 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 File 3/ Acts Cell-II /Spare - 5.

//Forwarded/by Order//


Additional Commissioner (PR)(FAC)