

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

ACAAR No.6/2015-16
Acts cell-II/11019/2015

Dated: 30.04.2018

- Present:**
1. Dr. T.V. Somanathan, I.A.S.,
Principal Secretary/Commissioner of Commercial Taxes
 2. Thiru M. Parameswaran,
Additional Commissioner (ST), (Public Relations)(FAC)
 3. Thiru C. Palani,
Additional Commissioner (ST), (Revision Petitions)(FAC)

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| 1. | Name and address of the Applicant | : | Tvl. Schwing Stetter India Pvt. Ltd., F71, SIPCOT Industrial Park, Irungattukottai, Sriperumbudur - 602 105. |
| 2. | Registration Certificate No. | : | TIN:33741662410/ CST:722138 |
| 3. | Assessment Circle | : | Sriperumbudur Assessment Circle |
| 4. | Date of application | : | 07.04.2015 |
| 5. | Date of receipt of application | : | 07.04.2015 |
| 6. | Clarification sought for | : | Rate of Tax on " Asphalt Batch mix plant " |
| 7. | Date of Personal Hearing | : | 10.04.2015 |
| 8. | Represented by | : | Thiru K. Sethuraman, General Manager (Finance & Accounts) |

ORDER

Tvl. Schwing Stetter India Pvt. Ltd., F71, SIPCOT Industrial Park, Irungattukottai, Sriperumbudur - 602 105 (TIN: 33741662410), the registered dealers in the files of Sriperumbudur Assessment Circle 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).

2. The applicant-dealers have requested the Authority for clarification on the rate of tax on **Asphalt Batch mix plant** in the following circumstances:

- i. Clarify and state that the sale of Asphalt Batch mix plant in the state of Tamil Nadu will attract TNVAT Act at the rate of 5%.
- ii. Clarify and state the rate of Central Sales Tax to be applicable for inter-State sales with 'C' form on the sale of Asphalt Batch mix plant to contractors who are registered dealers outside the State of Tamil Nadu?
- iii. Clarify and state the rate of Central Sales Tax on inter-State sales of Asphalt Batch mix plant to contractors who are non-dealers.

3. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006 and Rules 2007 and the related entries regarding the commodities classified under the First and Fourth Schedule to the TNVAT Act, 2006. Section 48-A of TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities.

4.1. "Asphalt Batch mix plant" is a capital goods used in the manufacture of Asphaltic concrete is liable to tax @ 5% in the State of Tamil Nadu under Entry No. 25 of Part-B of First Schedule to the TNVAT Act, 2006.

4.2. In respect of sales of "Asphalt Batch mix plant" to contractors who are registered dealers outside the State of Tamil Nadu, the dealers have to follow Section 8 of the Central Sales Tax Act, 1956, according to which, they may have to pay tax at the rate applicable under the local sales tax law of this State or @ 2%, as the case may be. Therefore, the applicable rate of tax when these goods are sold to other State with 'C' Form is 2% with effect from 01.06.2008 and the applicable local rate of tax if such goods are not covered by 'C' Form declaration. Thus, any goods including Asphalt Batch mix plant sold to other State under the cover of 'C' Form to registered dealers (contractors) in other State, the applicable rate of tax under Section 8 (1) of the Central Sales Tax Act, 1956 is 2%.

4.3. The application of Section 2 (11) and Entry No. 25 of Part-B of First Schedule of the TNVAT Act, 2006 is restricted in the sense that the

5% rate of tax applicable when it is sold within the State of Tamil Nadu. In order to encourage the manufacturers located within the State of Tamil Nadu and to reduce the cost of investments in capital goods, such benefit of concessional rate of 5% has been provided. Since this rate of tax benefit is conditional based, as per Section 8(2) of the Central Sales Tax Act, 1956, the term "applicable rate of tax" that defines rate of tax in the normal circumstances, the concessional rate of tax at 5% is not applicable in respect of inter-State sales to unregistered contractors outside the State of Tamil Nadu.

4.4. Further, in the applicant's case, the High Court of Madras while dealing with the same issue, has observed at para 78 as under :

"In so far as the second category of cases is concerned, their grievance is that they are selling goods which fall within the clause (a) to (g) of Section 2 (11). But, they are selling those goods to Governments, Government undertakings, or Government Companies of other States which do not hold a certificate of Registration under the CST Act, 1956. Therefore, they are not able to get 'C' Form declarations so as to get the benefit of a concessional rate of tax under Section 8(1) of the CST Act, 1956. They are also not able to get a concessional rate as prescribed in Entry 25 of the First Schedule to the TNVAT Act, 2006, since the goods are not used "in the State" so as to satisfy the requirement of Section 2 (11). Therefore, the grievance of those belonging to the second category in that they are made to lose on both ends."

4.5. Against this order, the applicant-dealer filed SLP before the Supreme Court in SLP (C) No. 17804-17808/2016 and the same was also disposed with the observation that "we are not inclined to interfere with the order passed by the High Court."

5. In view of the above, it is clarified that

- i. **"Asphalt Batch mix plant"** is a capital goods used in the manufacture of Asphaltic concrete in the State of Tamil Nadu, is liable to tax @ 5% under Entry No. 25 of Part-B of First Schedule read with Section 2(11) of the TNVAT Act, 2006.
- ii. **"Asphalt Batch mix plant"** if sold to registered dealers (contractors) in other State under the cover of 'C' Form declaration, the applicable rate of tax under Section 8 (1) of the Central Sales Tax Act, 1956 is 2%.

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- iii. **"Asphalt Batch mix plant"** if sold to the contractors in other States who are non-dealers, the applicable rate of tax is taxable @ 14.5% under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006 with effect from 12.07.2011 and 12.5% before 12.07.2011.

Dated this the thirtieth day of April 2018.

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

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

Sd/- Dr. T.V. Somanathan,
Principal Secretary/
Commissioner of Commercial Taxes

To
Tvl. Schwing Stetter India Pvt. Ltd.,
F71, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur – 602 105.

Copy to:
The Assistant Commissioner (ST),
Sriperumbudur Assessment Circle.

The Joint Commissioner (ST),
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 (ST) including Enforcement, LTU, MOU and ISIC.

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//


State Tax Officer
20/05/18
S.T.O.