

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

ACAAR No.65/2015-16
Acts cell-II/27052/2015

Dated:30.11.2015

- Present:**
- 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)

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|----|-----------------------------------|---|---|
| 1 | Name and address of the Applicant | : | Tvl. Sizer Metals Pvt. Ltd, SF No. 810/2, Anna Nagar Road, Near Kathir College, Neelambur, Coimbatore - 641014 |
| 2. | Registration Certificate No. | : | TIN.No.33442123713 CST. 1023022 |
| 3. | Assessment Circle | : | Peelamedu (North) Assessment Circle, Coimbatore |
| 4. | Date of application | : | 31.08.2015 |
| 5. | Date of receipt of application | : | 31.08.2015 |
| 6. | Clarification sought for | : | Applicability of Local VAT for Goods transferred from FTWZ/ SEZ to DTA |
| 7. | Date of Personal Hearing | : | Personal Hearing not Requested |
| 8. | Represented by | : | Thiru. Abizer Tambawala |

ORDER

Tvl. Sizer Metals Pvt. Ltd., Coimbatore - 641014 (TIN.No. 33442123713), the registered dealers in the files of Peelamedu (North) Assessment Circle, Coimbatore have preferred application in Form 'VV'

and sought clarification under Section 48-A (1) of the TNVAT Act, 2006, read with Rule 12-A of TNVAT Rules, 2007.

2.1. The applicant-dealers have sought for clarification on the following:

“Applicability of Local VAT on Goods Viz., Non-Ferrous metals like Tin, Lead, Nickel and Zinc Ingots transferred from Free Trade Warehousing Zones (herein after referred to as FTWZ) to Domestic Tariff Area (herein after referred to as DTA)”

2.2. The applicant-dealer is a trader and importer of non-ferrous metal Viz., Non-Ferrous metals like Tin, Lead, Nickel and Zinc Ingots. These Non-Ferrous metals Ingots were imported and Warehoused at their Warehouse unit located @ Sriperumbudur. The Government of India established Free Trade Warehousing Zones (FTWZ) under Chapter VII A of **Foreign Trade Policy 2004-09** to make duty free import of all goods (except prohibited items) for warehousing. As per the policy, the bond towards custom duty on Import would be subject to similar provisions as applicable to the Units in SEZ. The goods brought into the FTWZ shall be permitted to be cleared for Home Consumption and sold to DTA or re-exported. The re-exported goods will not attract Local VAT. In terms of Customs provisions, the goods warehoused in FTWZ can be cleared for home Consumption sold in the Domestic Tariff Area (DTA) on payment of the applicable Custom duties. The goods shall be to be warehoused for a maximum period of 2 years, after which they shall necessarily be re-exported or cleared for Home Consumption.

2.3. The dealer further more states the following information in the annexure provided along with the application. The applicant-dealer also enclosed a Notification No. 45 of 2005 by the Deputy Secretary to the Government of India dated. 16th, May 2005. This notification read with Notification No.18/2011 - Customs dated 1st March 2011 exempts all

goods cleared from- in SEZ and brought to any other place in accordance with the provision of Foreign Trade Policy, 2004-09 from the whole of additional duty of custom leviable thereon under Section 3(5) of the Customs Tariff Act, 1995 i.e., Special Additional Duty (SAD). The proviso to this notification states that no such exemption shall be applicable if such goods when sold in domestic tariff area are exempted by the State Government by payment of Sales tax or VAT. When the goods are brought into FTWZ Bill of Entry for Home Consumption is filed. The goods brought in FTWZ are owned by the Importer. The Importer thereafter may either exports or resale the same goods within India. In a Warehouse facility no manufacture or processing activities are done except the repacking etc.,

2.4. The applicant-dealer had an impression that the course of Import Continues until goods are sold by them/FTWZ unit to a DTA. They requested for a clarification that they were paying SAD and therefore the Sales Tax should be Exempt as the SAD is collected in lieu of Sales Tax.

3. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006 and Rules 2007 and the provisions under Special Economic Zone Act, 2005 and Rules, 2006, Tamil Nadu Special Economic Zone (Special Provisions) Act, 2005 and the relevant provisions under Indian Customs Act, 1962.

4. Section 48-A of TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities. The applicant dealers have sought for clarification concerned with **"Applicability of Local VAT on Goods Viz., Non-Ferrous metals like Tin, Lead, Nickel and Zinc Ingots transferred from Free Trade Warehousing Zones (herein after referred to as FTWZ) to Domestic Tariff Area (herein after referred to as DTA)"**.

5. Section 2 (n) of SEZ Act, 2005 defines the Free Trading and Warehousing Zone as given below:

"Free Trading and Warehousing Zone means a special economic zone, wherein mainly trading and warehousing and other activities relating to their business carried on".

6. The benefits of exemption or drawbacks under SEZ Act, 2005 are extended to the units located in FTWZ, since they are trading facility, and are to be treated as a deemed Foreign Territory, within Indian Territory, beyond the Customs Frontiers of India. The FTWZ units are expected to carry out their activities within a customs bonded area. Any area which is not under the jurisdiction of a custom bonded area is called a Domestic Tariff Area. Hence, the transfer of goods from FTWZ to DTA may not be covered within the jurisdiction of Indian Customs Act, 1962.

7.1. As per Section- 30 (a) & (b) of SEZ Act, 2005, which are read as below;

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

7.2. As per Section 15 (a) & (b) of Tamil Nadu Special Economic Zone (Special Provisions) Act, 2005 (Act No.18 of 2005), which are read as below;

"(a) any goods removed from a Special Economic Zone to the

tax under the TNGST, 1959 and the Tamilnadu Additional Sales tax Act, 1970 and the entry tax under the Tamil Nadu Entry of Motor Vehicles into Local Areas Act, 1990 and the Tamil Nadu Entry of Goods into Local Areas Act, 2001, wherein applicable, as leviable on such goods when imported;”

“(b) the rate of sales tax, additional sales tax and entry tax, if any, applicable to goods removed from a SEZ shall be at the rate in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of tax.”

The expression “Sales tax and Additional Sales tax” under the TNGST, 1959 and the Tamilnadu Additional Sales tax Act, 1970 and the expression “Sales tax and Additional Sales tax” respectively employed under Section 15(a) and (b) of TNSEZ (SP) Act, 2005 may be read as VAT, due and payable under TNVAT Act, 2006, since, the former acts have been repealed with effect from 01.01.2007 by implementing the latter act.

7.3. The Authority for Clarification and Advance Ruling presume that while importing goods into India, the importer is required to pay Special Additional Duty (SAD) as per Section 3(5) of Customs Tariff Act. The rationale behind levying this import duty is to counterbalance VAT (i.e. tax revenues of state Government) and boost the domestic suppliers (which would have been purchased from domestic market otherwise). Despite that, the importer shall be bound to pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be; Intra-state or inter-state sale is considered to be a subsequent sale exigible to VAT/CST as the case may be as laid down under Section 15 (a) and (b) of the Tamil Nadu Special Economic Zone (Special Provisions) Act, 2005.

7.4. The Non-Ferrous metals like Tin, Lead, Nickel and Zinc Ingots, which the dealer imported and warehoused at their FTWZ located at Sriperumbudur and are cleared for home Consumption and transferred to

DTA on payment of appropriate quantum of custom duty, would fall under Entry in S.No.89 (i) of Part-B of First Schedule with the description "Non Ferrous Metals and Alloys" to the TNVAT Act, 2006 and are liable to tax @ 5% .It is the dealer's responsibility to collect and pay the tax @ 5% on the non-ferrous metal Viz., Non-Ferrous metals like Tin, Lead, Nickel and Zinc Ingots, cleared from FTWZ for Home Consumption and sold to DTA.

8. It is therefore clarified that the **Imported Non-Ferrous metals like Tin, Lead, Nickel and Zinc Ingots, which are cleared for "Home Consumption" from FTWZ and are transferred/Sold to DTA, are liable to tax at 5% as per Entry-89 (i) of Part-B of First Schedule to the TNVAT Act, 2006.**

Dated this the 30th day of November 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. Sizer Metals Pvt. Ltd,
406, Jaswanti Landmark,
Mehra Industrial Estate,
LBS Marg, Vikhroli (W),
Mumbai - 400 079.

Copy to:
The Assistant Commissioner (CT)
Peelamedu (North) Assessment Circle, Coimbatore
The Joint Commissioner (CT),
Coimbatore 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 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//

 30/11/15
Additional Commissioner (RP)