



**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

ACAAR No.75&76/2012-13
Acts cell-II/21581/2014

Dated:30.12.2015

- 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)

- Ref:**
1. Proceedings of the Authority for Clarification on Advance Ruling in ACAAR 75/2012-13 (Acts Cell-II/35904/2013), dated: 06.02.2013.
 2. Proceedings of the Authority for Clarification on Advance Ruling in ACAAR 76/2012-13 (Acts Cell-II/35905/2013), dated: 06.02.2013.
 3. Review application from Tvl. Hindustan Colas Limited, No.A-9, SIPCOT Industrial Park, Irunkattukottai, Kancheepuram District, dated 08.07.2014.

REVIEW ORDER

Tvl. Hindustan Colas Limited, No.A-9, SIPCOT Industrial Park, Irunkattukottai, Kancheepuram District, (TIN: 33501663027) the registered dealers in Bitumen Emulsion, in the files of Sriperumpudur Assessment Circle, have preferred application under Section 48-A (4) of the TNVAT ACT, 2006, before the Authority for Clarification and Advance Ruling, hereinafter to be referred as Authority, for review of the clarifications already advanced in respect of Bitumen Emulsion

and Polymer Modified Bitumen respectively vide the proceedings of the Authority first and second read above.

2. The rate of tax in respect of "Bitumen Emulsion" and "Polymer Modified Bitumen" was respectively clarified in the proceedings of the Authority first and second read above as detailed below:

Clarification in ACCAR No.75/2012-13:

"Bitumen Emulsion" is unclassified item taxable at 14.5% under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006.

Clarification in ACCAR No.76/2012-13:

"Polymer and Crumb Rubber Modified Bitumen" is unclassified item taxable at 14.5% under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006.

3. The applicant-dealer, on having dissatisfied with the above said clarification, has requested to review the same and to re-clarify the rate of tax on "Bitumen Emulsion" by considering the following:

The "Bitumen Emulsion" and "Polymer and Crumb Rubber Modified Bitumen" manufactured by the applicant-dealer is an advanced form of bituminous product, only used for road laying purpose. These products are nothing but the extension of bitumen/asphalt, in a more refined form having no use other than for road laying.

The dictionary meaning of the term, "bitumen" is "a black substance obtained from oil or a petroleum product used for covering roads." Bituminous is the adjective of the term bitumen. Bituminous emulsion is also used for laying roads. "Polymer and Crumb Rubber Modified Bitumen" by adding plastics or crumb rubber with bitumen or asphalt is also an upgraded variety of bitumen used for the purpose of laying of roads.

Bituminous emulsion and "Polymer and Crumb Rubber Modified Bitumen" are commercially known as Bitumen, by both the traders and users. The Oil Marketing Companies, manufacturing and marketing "Bituminous Emulsion" or Bitumen Emulsion" are charging only 5% on sale of the same inside Tamil Nadu.

Bitumen is taxable at 5% or at the base rate in the States of Punjab, Himachal Pradesh, Mizoram, Arunachal Pradesh and uniformly throughout the country under respective entry in respective schedule to the respective State Acts.

Considering the above facts, the Authority might have clarified that Bitumen Emulsion is taxable at 5% as that of Bitumen under Entry 18 of Part-B of First Schedule to the Act, instead of having clarified as taxable at 14.5% under Entry 69 of Part-C of First Schedule, vide ACAAR No.75/2012-13 dated 06.02.2013.

The impugned order of the Authority in ACAAR No.76/2012-13 dated 06.02.2013 is *per incuriam*, that means giving a decision by a court without reference to a statutory provision or earlier judgment which would have been relevant to the case.

While passing the impugned clarifications, the authority has ignored the decision of the Apex Court in the similar matter in the case of Kores India Limited, Chennai vs. Commissioner of Central Excise, Excise, wherein the term, "manufacture" has been defined clearly as being *a process that would bring out transformation resulting in commercially different and distinct commodity and not the mere change in form or shape.*

The Authority has also ignored the decision of the Apex Court in the case of Commissioner of Central Excise, Bangalore-II vs. Osnar Chemicals Pvt. Ltd., wherein it has been observed that *the process of mixing polymers and additives with bitumen does not amount to manufacture and not resulted in transformation of bitumen into a new product having a different identity, characteristic and use. The*

end use also remained the same, namely for mixing of aggregates for constructing roads.

The impugned order of the Authority stands contrary to the above referred decisions and thus per incuriam.

On the strength of the above, the applicant-dealers have requested that the earlier proceedings, of the Authority may be reviewed on the basis of the decisions above referred and accordingly clarified that Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen is nothing but the bitumen taxable at 5% under Entry 18 of Part-B of First Schedule to the Act.

4. Section 48-A(4) of the TNVAT Act 2006 provides that the Authority may review, amend, or revoke its clarification or advance ruling at any time for good and sufficient reason after giving opportunity of being heard to the affected parties. As per section 48-A (5), there is no limitation for reviewing, amending or revoking the earlier clarification or advance ruling. The applicant-dealer have requested that they may be given an opportunity of being personally heard. The applicant-dealer were accordingly informed to appear for personal hearing as scheduled on 18.11.2014. Thiru. P. Srinivasa Rao, the Assistant Manager (Commercial) and Authorized Representative of the applicant-dealers has appeared before the Authority on 18.11.2014 and represented for and on behalf of the applicant-dealers.

5. The Authorized Representative has reflected the facts as narrated in their grounds for this review. The Authorized Representative has also produced the copies of the judgments of the Apex Court in the cases of Commissioner of Central Excise, Bangalore-II vs. Osnar Chemical Private Limited in Civil Appeals No.4055-4056 with 5633/2009 and 7142/2010 dated 13.01.2012 and Commissioner of Central Excise, Mumbai vs. Tikitat Industries

and Another reported in (2010) 13 SCC 72, the Proceedings of the Commissioner of Commercial Taxes, Karnataka, Bangalore in Clarification No.CLR.CR.179/19-10 dated 22.04.2010, the Andhra Pradesh Value Added Tax (Second Amendment) Act, 2013 (Act No. 13 of 2013) for ready reference for the Authority, as connected with the matter in review. Authorized Representative has also requested that the rate of tax on Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen may be appropriately clarified.

6. The facts presented and the decisions referred are considered carefully. The clarification by the Commissioner of Commercial Taxes, Karnataka, Bangalore, in Clarification No.CLR.CR.179/09-10 dated 22.04.2010 in respect of bitumen emulsion and polymer modified bitumen and the amendment by adding the words, "**of all Varieties**" to the Entry "**Bitumen**" in Sl. No.14 of Schedule -IV to the APVAT Act, 2005 as per the Andhra Pradesh VAT (Second Amendment) Act, 2013 are also taken into considerations with due applicability.

7. It is admitted fact that the Apex Court has defined the term, "**Manufacture**" clearly in the case of Kores India Limited, Chennai vs. Commissioner of Central Excise, as extracted below:

Manufacture implies a change, but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would

amount of processing of the commodity. But it is only the change or series of changes takes the commodity to the point where commercially can no longer be regarded as the original commodity but instead recognized as a new and distinct article that a manufacture can be said to take place.

8. The Apex Court, as pointed out by the Applicant-dealer in the case of Commissioner of Central Excise, Bangalore-II vs. Osnar Chemical Private Limited in Civil Appeals No.4055-4056 with 5633/2009 and 7142/2010 dated 13.01.2012, involving the similar issue that is mixing polymers and other additives with Bitumen for producing the Polymer Modified Bitumen and, Crumbed Rubber Modified Bitumen, after referring several decisions with reference to manufacture, have observed as follows:

"23. Having considered the matter on the touchstone of the aforesaid legal position, we are of the view that the process of mixing polymers and additives with bitumen does not amount to manufacture. Both the lower authorities have found as a fact 22 1980 (6) E.L.T. 343 (SC) that the said process merely resulted in the improvement of quality of bitumen. Bitumen remained bitumen remained bitumen. There was no change in the characteristics or identity of bitumen and only its grade or quality was improved. The said process did not result in transformation of bitumen into a new product having a different identity, characteristic and use. The end use also remained the same, namely for mixing of aggregates for constructing the roads."

9. The definition of 'Manufacture' in Section 2(27) of the TNVAT Act, 2006 also reveals the similar view as that any process of goods which brings into existence a commercially different and distinct commodity. It is the claim of the applicant-dealer that Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen are the

species of the genus Bitumen. It is also claimed that the processes by which the Bitumen Emulsion and the Polymer and Crumb Rubber Modified Bitumen do not amount to manufacture falling within the explanation recorded by the Apex Court in the case of Kores India Limited, Chennai and the Osnar Chemical Pvt. Limited, as above referred and the definition of "Manufacture" under section 2(27) of the TNVAT Act, 2006, as the resultant products such as the Bitumen Emulsion and the Polymer & Crumb Rubber Modified Bitumen are the upgraded forms of Bitumen and not the new products commercially different from the Bitumen/Asphalt, the predominant ingredient in Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen, either in nature, characteristic or use. Both the Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen are used only for the construction of roads.

10. The Supreme Court, in an another case of Commissioner of Central Excise, Mumbai vs. Tektit Industries and Another reported in (2010) 13 SCC 72, have decided that the blowing process, whereby the oxidation of the Bitumen is carried out to convert the straight grade bitumen into blown grade bitumen, does not amount to manufacture with reference to the Central Excise Chapter Heading 5903.90.

11. The applicant-dealer, though claiming that the processes of preparation of Bitumen Emulsion and Polymer Modified Bitumen, have failed to furnish, along with the original application preferred under section 48-A(1) and the review application preferred under section 48-A(4), the details about or to narrate the processes through which the normal grade bitumen is subjected to other additives to result the Bitumen Emulsion and Polymer and Crumb Rubber Modified Bitumen, Moreover the decisions referred by the applicant-dealer are with reference to the Central Excise

Classification of the Bitumen and Bituminous products. The Entry 18 of Part-B of First Schedule to the TNVAT Act, 2006 is about "Bitumen" only so as to mean the bitumen or asphalt derived from petroleum industry. This Entry 18 of Part-B of First Schedule does not throw anything to include under its ambit the derivatives of bitumen or other bituminous products prepared by adding the waste plastics or the waste or crumbled rubber. Under such circumstances, the applicability of the referred decisions of the Supreme Court is found hard.

12. Moreover, the clarification issued is Clarification No.CLR.CR.179/09-10 dated 22.04.2010 by the Commissioner of Commercial Taxes, Karnataka, Bangalore regarding rate of tax on Bitumen Emulsion as 5% from 01.04.2010 as per Sl. No.15 of Third Schedule to the KVAT Act, 2003 and Polymer Modified Bitumen as 13.5% as per section 4(1)(b) of KVAT Act, 2003, do not KVAT provisions. Besides, the Entry is Sl. NO.14 of Schedule-IV of APVAT Act, 2005 as amended by APVAT (Second Amendment) Act, 2003(Act No.13 of 2013) to read as "**Bitumen of all varieties**" does not also help the applicant-dealers, since the Entry 18 of Part-B of First Schedule to TNVAT Act, 2006 reads only as "**Bitumen**".

13. On the forgoing discussions, it is construed that it is hard to find whether the processes of preparation of Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen does amount to manufacture or not as within the ambit of the definition of 'Manufacture' under section 2(27) of TNVAT Act, 2006, in the absence of the facts or narration about such processes. Besides, it is not able to be decided that the Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen are the improved varieties of the Bitumen falling within the ambit of Entry 18 of Part -B of First Schedule, since this Entry speaks nothing about the varieties of

bitumen to be included under Bitumen as in the case of related entry under APVAT Act, 2005. It is concluded therefore that the clarifications already advanced by the Authority in respect of rate of tax on Bitumen Emulsion and Polymer & Crumb Rubber Modified Bitumen respectively in ACAAR Nos. 75 and 76 dated 06.02.2013 need no further interference.

14. It is therefore reiterated as follows:

- (i). **"Bitumen Emulsion" is unclassified item taxable at 14.5% under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006, as already clarified in ACAAR No. 75/2012-13 dated 06.02.2013.**
- (ii). **"Polymer and Crumb Rubber Modified Bitumen is unclassified item taxable at 14.5% under Entry 69 of Part-C of First Schedule to the TNVAT Act, 2006, as already clarified in ACAAR No, 76/2013-13 dated 06.02.2013.**

Dated this the Thirtieth day of December 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. Hindustan Colas Limited,
No.A-9, SIPCOT Industrial Park, Irunkattukottai,
Kancheepuram District

Copy to:
The Assistant Commissioner (CT)
Sriperumbudur 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//

 30/2/15
Additional Commissioner (RP)