

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

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

ACAAR No.77/2015-16.
(Acts Cell-II/5591/2015)

Dated:07.02.2017

ACAAR No.82/2015-16.
(Acts Cell-II/5590/2015)

- 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)

REVIEW ORDER

- Ref:**
1. Proceedings of the Authority for Clarification and
Advance Ruling ACAAR No.77/2015-16 (Acts Cell
II/31300/2015) dated 30.11.2015.
 2. Proceedings of the Authority for Clarification and
Advance Ruling ACAAR No.82/2015-16 (Acts Cell
II/31305/2015) dated 30.11.2015.
 3. Review Application from Tvl.Christy Friedgram
Industry, Tiruchengode, Namakkal dated
25.02.2016
 4. Review Application from Tvl.Rasi Nutri foods,
Rasipuram, Namakkal dated 25.02.2016

Tvl.Rasi Nutri Foods, Ayeepalayam, Athanur, Rasipuram - 636 301
(Acts cell II/5591/2016) (TIN.No.33083162296), the registered dealers in
the files of Rasipuram Assessment Circle and Tvl. Christy Fried Gram
Industry, Andipalayam, Tiruchengode, Namakkal - 637214 (Acts cell
II/5590/2016) (TIN.No. 33873200807), the registered dealers in the files

of Tiruchengode Rural Assessment Circle have preferred review applications on the orders passed by this authority under Section 48-A (4) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006) in the proceedings 1st and 2nd cited. 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 same applicant dealers [Rasi Nutri Foods, Namakkal] and [Christy Friedgram Industry, Tiruchengode], it was clarified in the proceedings 1st and 2nd cited as follows:

"Bengal gram purchased by the applicant-dealers from registered dealers inside the State without sufferance of tax and used as an ingredient among other ingredients like wheat, jiggery, vitamins etc., in the production of weaning food is liable to purchase tax under Section 12(1)(a) of the TNVAT Act, 2006 at the rate of 4% and 5 % respectively in the period prior to and from 12.07.2011, by virtue of Entry in Sl. No. 41 of Part-B of First Schedule to the TNVAT Act, 2006, read Section 14(vi-a) (i) of CST Act, 1956 and classification under"

3.1. The applicant-dealers have requested to review the above clarifications and to clarify that Bengal gram, purchased by them and used in the manufacture of weaning foods is not liable to purchase tax under Notification no.(II)(1)CTR/15/2009 issued in G.O.Ms.no.67 CT&R (B2)department dated 21-05-2009.

4. The applicant-dealers sought for personal hearing and accordingly they were heard on 12.01.2017. Thiru. M. Vannakannan, DGM (Accounts) [Christy Friedgram Industry, Tiruchengode] and Thiru. S.Hari Hara Krishnan, AGM (Accounts) [Rasi Nutri Foods, Namakkal] appeared for the hearing and filed written statements along with documentary evidences and reiterated the above contentions.

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

(i) The exemption from levy of purchase tax under Sec. 12 of TNVAT Act by Notification No.II(1) CTR/15/2009 in G.O.Ms.No.67 CT&R (B2) department dated 21-5-2009 is applicable for "production of the goods like flour", which includes production of weaning food by the applicant in the form of flour.

(ii) By virtue of Sec. 15 of TNVAT Act, the purchase of Bengal gram by the applicant is exempt from levy of purchase tax, as the goods would fall under Fourth Schedule to TNVAT Act, under Entry 68 of Part-B, as the total turnover of the applicant is below Rs. 500 crore.

(iii) As per the decision of the Madras High Court in the case of Division Bench of the Honourable High Court of Madras in the case of Hotel Shri Kannan, Brough road, Erode vs. The state of Tamilnadu and batch cases in W.A.No.465 of 2007 dated 24-04-2007, the exemption granted to 'sales' is applicable to 'purchase' also. Therefore, the exemption available for the sale of gram upto Rs. 500 crore is applicable to purchase also.

6. The above contentions of the applicant are discussed as follows:

(i) In VAT system of levy, tax is levied or exemption granted at the point of sale only, as a rule. Levy of purchase tax is by exception. Therefore, exemption applicable to sales would not be automatically applicable to purchase point also as contended by the applicants.

Section 15 of the TNVAT Act, 2006 reads as follows:

"Exempted Sale - Sale of goods specified in the Fourth Schedule and the goods exempted by notification by the Government by any dealer shall be exempted from tax."

Similarly, in Entry 68 of Part-B of Fourth Schedule to the TNVAT Act, 2006, "sale" of pulses and grams up to the turnover of Rs.500 crore in a year is exempted. Whereas, the transaction under discussion is purchase of gram. Therefore, the second contention of the applicant that gram dealt by a dealer having annual turnover of less than Rs. 500 crore would fall under Entry 68 of Part-B of Fourth Schedule to TNVAT Act and hence exemption available under Section 15 of the TNVAT Act, 2006 is applicable to the levy of purchase tax is not acceptable.

(ii) As far as the third contention of the applicant that the decision of the Madras High Court in Hotel Shri Kannan case is applicable to them is not correct for the reason that in the above decision of the Madras High Court, the applicability of the clarification issued by the Commissioner of Commercial Taxes was under consideration and a decision given. Further, the facts and law discussed in the above case are related to the provisions of TNGST Act and the clarifications issued by the Commissioner of Commercial Taxes under the above law. No ruling was made in this case to the effect that the exemption applicable to sales is always

applicable to purchase also, as contended by the applicants. Hence, this contention of the applicant is also not acceptable.

(iii) The first contention of the applicant is that they are manufacturers of weaning food which is in the form of flour. As per the notification Notification No.II(1) CTR/15/2009 in G.O.Ms.No.67 CT&R (B2) department dated 21-5-2009, purchase tax on the purchase of pulses and gram has been exempted if such purchase is effected for the purpose of production of any goods like flour and therefore, the above notification is squarely applicable on their transaction. In the earlier clarification issued by this Authority, the above Notification was considered and it was held that the exemption granted in the above Notification is applicable only in case of production of Gram flour.

The Notification No.II(1)/CTR/15/2009 published in G.O.Ms.No.67, CT&R(B2) dated 21st May 2009 (Effective from 01.01.2007) reads as follows:

“ In exercise of the powers conferred by sub-section (1) of section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable under Section 12 of the said Act by any dealer on the purchase of peas and peas dhall specified in item 67 and pulses and grams specified in item 68 of Part-B of the Fourth Schedule to the said Act, for use in the production of goods like flour.”

The expressions “for use in production” and “goods like flour” mentioned in the above notification have not restricted the exemption only for the conversion of pulses and gram into flour. On the other hand, the above expressions have widened the scope of production activity of the buyer of the pulses and gram for production of any goods like flour. In the case of applicant dealers, there is no dispute that the weaning food produced by them is in the form of flour. However, certain other ingredients like jaggery, vitamins etc., are added with gram flour in the process of production of weaning food. Therefore, after the purchase of gram by the applicant dealers, the production takes place and the final product is in the form of flour, as noted in the Notification. Consequently, if the above notification is strictly applied on the activities of the applicants, the purchase of Bengal gram by them may be exempt levy to purchase tax under Section 12 of TNVAT Act, 2006 under the above Notification.

7. In view of the above discussion, revoking the earlier clarifications issued in the references 1st and 2nd cited, it is re-clarified that the purchase of Bengal Gram by the applicant-dealers for use in the production of weaning food is eligible for exemption from purchase tax under Section 12(1)(a) of the TNVAT Act, 2006 as per Government Notification No.II(1)/CTR/15/2009 published in G.O.Ms.No.67, CT&R(B2) dated 21-05-2009.

Dated this the Seventh day of February 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. Rasi Nutri Foods,
Ayeepalayam, Athanur,
Rasipuram – 636 301.
2. Tvl.Christy Friedgram Industry,
A2 & A3, SIDCO Industrial Estate,
Andipalayam – 637 214,
Tiruchengode (TK),
Namakkal(DT).

Copy to:

1. The Assistant Commissioner (CT),
Rasipuram Assessment Circle.
2. The Assistant Commissioner (CT),
Tiruchengode Rural Assessment Circle

The Joint Commissioner (CT),
Salem 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//


Commercial Tax Officer