

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

ACAAR No. 85/ 2012-13.
Acts cell – II/26873/2013

Dated 23.10.2014

- Present:**
1. Thiru. K.Rajaraman, 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)

1	Name of the Applicant	:	Tvl. Sathyanarayana Trading Company, No.70, Main Road, Namakkal – 637 001.
2.	Registration Certificate No.	:	TIN:33473120032 / CST:413034
3.	Name of Assessment circle	:	Namakkal (Town), Namakkal.
4.	Date of review application	:	20.08.2013
5.	Date of receipt of application	:	02.09.2013
6.	Clarification sought for	:	Review of clarification in respect of " Primers " in ACAAR No.85/2012-13 dated 14.02.2013.
7.	Date of Personal Hearing	:	23.09.2014
8.	Represented by	:	Thiru. S.Rajasekar Advocate & Counsel for applicants

ORDER

Tvl. Sathyanarayana Trading Company, No.70, Main Road, Namakkal – 673001 (TIN: 33473120032), registered dealers in Paints and Hardware in the files of Namakkal (Town) Assessment Circle, have preferred this review application as provided under Section 48-A (4) of the TNVAT Act, 2006. This review application is being preferred as aggrieved against the clarification already advanced in respect of rate of tax on "Primers" in ACAAR No.85/2012-13 dated 14.02.2013.

2. The Authority for Clarification and Advance Ruling had clarified in ACARR No.85/2012-13 dated 14.02.2013 on application under section 48-A(1) form Tvl. Berger Paints (India) Limited, Chennai-

86, requesting clarification concerned with the rate of tax on "Primers", as reproduced below:

*".....the **Primers of all kinds** used as industrial inputs are taxable at 5 % under Entry 67-A(ad)(iv) of Part-B of First Schedule to the TNVAT Act, 2006. If Primers are sold other than as industrial input, they are taxable at 14.5 % under Entry 50 of Part-C of the First Schedule to the TNVAT Act."*

This clarification has been on the observation preceded that the Legislative Intent seems to be that "Primers of all kinds" are to be classified as industrial inputs only, if it is used for industrial purposes and for all other painting purposes Primers are to be classified as species of Paints.

3. Aggrieved on the aforesaid clarification in respect of Primers, Writ Petitions were preferred before the Hon'ble High Court of Madras by the applicant-dealers in W.P. No,21201 of 2013, the Hon'ble High Court has by its order dated 02.08.2013 has observed as follows:

"The subsection (4) of section 48-A of the Tamil Nadu Value Added Tax Act, 2006, clearly shows that an application for review or amend or revoke a notification or clarification, would lie at the instance of the affected parties. Since the petitioner is also an affected party on account of clarification given by the Commissioner necessarily an application at the instance of the petitioner is maintainable to review the clarification. In case no such review is maintainable it would cause undue difficulties to the assesseees, notwithstanding the fact that they have not sought for any clarification from the Commissioner. The provision should be given a meaningful interpretation. Therefore, I am the view that the petitioner has got an alternative remedy by approaching the Commissioner as per sub-section (4) of Section 48-A of the Tamil Nadu Value Added Tax Act, 2006.

The petitioner is given liberty to file a review petition under section 48-A(4) of the Tamil Nadu Value Added Tax Act, 2006 and in event of submitting any petition on or before 15th September 2013, the same shall be considered and decided by the Commissioner on merits and as per law as expeditiously as possible and in any case within two months from the date of receipt of such review petition."

4. The applicant-dealers have filed the review application before the Authority on 02.09.2013, i.e., within the limitation prescribed by the Hon'ble High Court of Madras. The applicant-dealers have

furnished along with their review application the order of the Hon'ble High Court of Madras in W.P. No. 12018 & 12019 of 2013 dated 24.06.2013, wherein also similar observations have been made. Whereas the order of the Hon'ble High Court of Madras dated 02.08.2013 in the case of Writ petition No.21201 of 2013 preferred by the applicant-dealers themselves independent of the Association in which they are also members, has been received in the office of the Authority for Clarification and Advance Ruling on 03.09.2014. The applicant-dealers have been immediately provided with the opportunity of personal hearing and officially informed about the meeting to be convened on 23.09.2014 for personal hearing. Thiru. S.Rajasekar, the Advocate and Counsel for the applicant-dealers has appeared and represented on that day before the Authority for Clarification and Advance Ruling for and on behalf of the applicant-dealers and presented the facts of the case.

5. The applicant-dealers have pointed out that the preamble of the present Entry 67-A of Part-B of First Schedule as inserted with effect from 16.07.2007, as per section 2(1) of the TNVAT (Second Amendment) Act, 2007 (T.N. Act No.42 of 2007) reads, "*Goods which are sold either by the manufacturer or by the trader, namely*". The expression, "**as industrial input**", though employed in the Notification issued to the Entry 67-A existed up to 16.07.2007, vide G.O. Ms. No.79, Commercial Taxes and Registration (B2) Department dated 23.03.2007, has been omitted to have been employed in the preamble of the present entry 67-A of Part-B of First Schedule. It is evident that the intention of the Government is to tax the goods enumerated under Entry 67-A of Part-B of First Schedule to the Act @ 5 % generally. The leaned counsel has placed his arguments on the similar lines and requested to revoke the clarification already advanced and to clarify the rate of tax bearing in mind that the "Primers of all kinds" are generally liable to tax @ 5 % by virtue of its enumeration vide Entry 67-A (ad)(iv) of Part-B of First Schedule to the TNVAT ACT, 2006.

6. The issue has been examined in detail with reference to the provisions for review made under Section 48-A(4) of the TNVAT Act, 2006. Section 48-A (4) of TNVAT Act, 2006 provides for the Advance Ruling Authority to review, amend or to revoke the clarification issued on any point concerned with rate of tax for commodities at any point of time. In the present case, the applicant dealers have invited the jurisdiction of the Advance Ruling Authority to review its proceedings in ACAAR No.85/2012-13 dated 14.02.2013 as aforesaid, as that of an affected party, directed by the Hon'ble High Court of Madras by its order in W.P. No.21201 of 2013 dated 02.08.2013. The issue needs to be decided on this review application is,

"Whether the clarification in Proceedings of the Authority for clarification and Advance Ruling dated 14.02.2013 as above stated is to be rescinded as incorrect and to be appropriately re-clarified?"

7. "Primers of all Kinds" were originally notified as taxable @ 5 % if **sold by the manufacturer or the trader as industrial input** vide Notification No.II(1)CTR/30(a-1)/2007 in G.O.Ms. No.79, Commercial Taxes and Registration (B2) Department dated 23.03.2007. The goods so enumerated under Notification G.O. Ms. 79, dated 23.03.2007 were inserted by way of amendment by substituting the Entry 67 with Entries 67 and 67-A in Part-B of first Schedule vide G.O. Ms. No.135, Commercial Taxes and Registration (B2) Department dated 16.07.2007. The Entry 67-A in Part-B of First Schedule was once again inserted as per section 2(1) of the TNVAT (Second Amendment) Act, 2007 (T.N. Act No.42 of 2007) published in Tamil Nadu Government Gazette, Extraordinary, Part IV at pages 179 - 186 dated 15.11.2007, with retrospective effect from 16.07.2007. While in both occasions, as correctly pointed out by the applicant-dealers, the expression, "**as industrial input**", though employed in the said Entry 67-A originally inserted by the said Notification vide G.O. Ms. No.79 dated 23.03.2007, was omitted to have been employed in the preamble of the present entry 67-A of Part-B of First Schedule. The preamble of the present Entry 67-A of Part-B of First Schedule as inserted from 16.07.2007 reads, "Second Amendment) Act, 2007 (T.N. Act No.42 of 2007) reads, "*Goods which are sold either by the manufacturer or by the trader, namely*"; and afterwards the goods intended to be taxed @ 5 % had been enumerated and one among such goods are "Primer of all Kinds" in sub-entry (ad)(iv) of Entry 67-A.

8. It is evident as correctly claimed by the applicant-dealers and their learned Counsel, that the intention of the Government for amendment to Entry 67-A of First Schedule, by omitting the expression, "as industrial input" in its preamble, vide section 2(1) of TNVAT (Second Amendment) Act, 2007 (TN Act No. 42 of 2007) brought into effect from 16.07.2007, was to tax the goods enumerated under this Entry generally at the rate of 5 %, on sale either by the manufacturer or by the trader. It is to mean that the sale may be by all concerned from the manufacturer to the retailer in the supply or distribution chain, till it reaches the consumer, either the manufacturer or others. The observation of the Authority for clarification and Advance Ruling recorded in its earlier order dated 14.02.2013 that the Legislative Intent seems to be that "Primers of all kinds" are to be classified as industrial inputs only, if it is used for industrial purposes and for all other painting purposes Primers are to be classified as species of Paints is found to be incorrect and not supported by the language employed under Entry 67-

A of Part-B of First Schedule, inserted and brought into effect from 16.07.2007 and therefore liable to be rescinded.

9. Moreover, the Commissioner of Commercial Taxes, in the period prior to bringing the statutory provision for clarification under section 48-A of the Act, has clarified invariably in several occasions on request from several dealers in paints, that the primers are taxable at the rate of 4 % as in force then, under Entry 67-A(ad)(iv) of Part-B of First Schedule to the Act, as extracted in the table given below:

Sl. No.	Reference No. & date	Gist of clarification issued.
1.	VAT Cell/44128/2007 (VCC No.1070) dated 21.08.2007	Primers of all kinds, which are sold either by manufacturer or trader, are taxable at 4 % as per G.O.Ms. No.135, CT & R Department dated 16.07.2007
2.	VAT Cell/42952/2007 (VCC No.1098) dated 22.08.2007	Primers of all kinds are taxable at 4 % vide G.O.Ms. No.135, CT & R Department dated 16.07.2007
3.	VAT Cell/47468/2007 (VCC No.1433) dated 05.12.2007	Primers of all kinds are taxable at 4 % vide Entry 67-A of Part-B of First Schedule to the Tamil Nadu Value Added Tax Act, 2006 with effect from 01.01.2007.
4.	VAT Cell/61042/2007 (VCC No.1458) dated 25.01.2008	Primers of all kinds are taxable at 4 % vide Entry 67-A (ad)(iv) of Part-B of First Schedule to the Tamil Nadu Value Added Tax Act, 2006 as per G.O.Ms. No.135, CT & R Department dated 16.07.2007.
5.	VAT Cell/59123/2007 (VCC No.1467) dated 25.01.2008	Primers of all kinds are taxable at 4 % vide Entry 67-A Sl. No. (ad)(iv) of Part-B of First Schedule to the TNVAT Act, 2006 w.e. from 16.07.2007.

6.	VAT Cell/62826/2007 (VCC No.1492) dated 20.02.2008	Primers of all kinds are taxable at 4 % vide Entry 67-A (ad)(iv) of Part-B of First Schedule to the TNVAT Act, 2006 with effect from 01.01.2007 either sold by manufacturers or by traders.
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Though the above mentioned clarifications, issued by the Commissioner of Commercial Taxes in the period prior to insertion of section 48-A of the Act, 2006, are bearing no statutory force, the same are taken as points for reference to understand the issue involved herein and to arrive at the appropriate conclusion regarding the rate of tax for "Primers of all Kinds" specifically enumerated under Entry 67-A (ad)(iv) of Part-B of First Schedule to the TNVAT Act, 2006. It is conclusively arrived at on the above that the "Primers of all Kinds", as enumerated under Entry 67-A (ad)(iv) of Part-B of First Schedule to the TNVAT Act, 2006 are generally taxable @ 5 % on sale either by the manufacturers or by the traders, that is to say, every sale of primers of all kinds throughout the supply or distribution chain from the manufacturer to the consumer, irrespective of the fact whether the consumer is a manufacturer or otherwise.

10. The Clarification, based on the above observations, in this regard is as follows:

- (i) **"Primers of all Kinds", are generally taxable @ 5 % on sale either by the manufacturers or by the traders under Entry 67-A (ad)(iv) of Part-B of First Schedule to the TNVAT Act, 2006,** irrespective of the fact whether it is sold as industrial inputs or otherwise.
- (ii) In consequent to this, **the earlier clarification advanced in ACAAR No.85/2012-13 dated 14.02.2013 is cancelled.**

Dated this, the 23rd Day of October, 2014.

Sd/- R. Vayanaperumal,
Additional Commissioner (PR)

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

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

To
Tvl. Sathyanarayana Trading Company,
No.70, Main Road,
Namakkal – 637 001.

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Copy to

The Assistant Commissioner (CT)
Namakkal 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.

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//Forwarded/By order//


Additional Commissioner (PR)