



### **ABSTRACT**

Waiver - Commercial Taxes Department - Waiver of tax, Additional Sales Tax and penalty payable by Tvl.Khader Spinners Private Limited, Dindigul under Tamil Nadu General Sales Tax Act, 1959 - Orders- Issued.

### **Commercial Taxes and Registration (D2) Department**

**G.O. (Ms) No.173**

**Dated:22.11.2022**

**சுபகிருது, கார்த்திகை - 06**

**திருவள்ளூர் ஆண்டு, 2053**

Read;

1. Orders of the Tamil Nadu Taxation Special Tribunal, Chennai, dated 15.03.1996 in OP.No.984 of 1996.
2. The Commissioner of Commercial Taxes Letter No.K.Dis.DC2/10161/2004, dated 08.02.2005
3. Orders of the Madurai Bench of Madras High Court, dated 02.07.2007 in WP No.5605 of 2005 and W.P.M.P.No.6114 of 2005.
4. Orders of the Madurai bench of Madras High Court, dated 30.10.2007 in WP No.5127 of 2005 and W.P.M.P (MD) No.5560 of 2005.
5. Representation from Tvl.Khader Spinners Private Limited, Dindigul dated 04.07.2019.
6. From the Additional Chief Secretary/ Commissioner of Commercial Taxes Letter No.DC-11/26714/2019, dated 05.08.2019 and 26.05.2022

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### **ORDER**

Tvl.Khader Spinners Private Limited, Dindigul was running a spinning mill along with hides and skins business at Dindigul and were an assessee in the books of Commercial Tax Officer, Dindigul III Assessment Circle (at present Dindigul Town Assessment Circle after re-organisation). They were assessed for the years 1990-1991 and 1991-1992 as follows:-

**Original orders passed, demand raised and collection details:**  
**(1990-1991 and 1991-1992)**

TNGST No / Year	Date of order	Tax	SC	ASC	AST	Penalty	Total
521246/ 1990-1991	22.06.95	6,25,287/-	19,487/-	7,748/-	5,73,790/-	6,13,156/-	18,39,468/-
521246/1991-1992	12.06.95	21,873/-	3,273/-	- -	16,367/-	- -	41,513/-
Total		6,47,160/-	22,760/-	7,748/-	5,90,157/-	6,13,156/-	18,80,981/-

2. The above original assessments were made by the assessing officer for the years 1990-1991 and 1991-1992 under the erstwhile Tamil Nadu General Sales Tax Act, 1959 and the same were revised under section 16(2) of the said Act, based on the proposals for disallowance of the inter-State purchases of cotton bales effected from the Federation's Godown at Coimbatore (i.e., The Maharashtra State Co-operative Marketing Federation Limited, Bombay) under the mode of Godown delivery system which was formulated by the Enforcement Officials. Accordingly, the purchase of cotton bales from Tvl.The Maharashtra State Co-operative Cotton Grower Marketing Federation, Coimbatore were treated as intra-State purchase of cotton bales in-lieu of inter-State purchase and the tax at the point of last purchase in the State for having taken delivery from the Federation's Godown at Coimbatore was levied on the entire purchase turnover of cotton bales as local purchase without sufferance of tax and Tvl.Khader Spinners Private Limited, Dindigul, being a Spinning Mill were re-assessed to tax on the purchase of cotton bales at the point of last purchase in this State as below:-

Details of re-assessment made under Section 16 of Tamil Nadu General Sales Tax Act, 1959:

Year	Tax	Amount	Penalty	Total	Date of Revision of Assessment order
1990-91	3,36,498/-	1,12,166/-	6,72,996/-	11,21,660/-	05.01.1996
1991-92	2,56,875/-	85,625/-	5,13,750/-	8,56,250/-	11.03.1996
Total	5,93,373/-	1,97,791/-	11,86,746/-	19,77,910/-	

3. Against the revision of assessment made for the year 1991-1992, dated 11.03.1996, Tvl.Khader Spinners Private Limited, Dindigul preferred an Original Petition before the Tamil Nadu Taxation Special Tribunal (TNTST), Chennai. The Tribunal, in its order first read above, disposed of with direction to the petitioner to file statutory appeal. However, the petitioner had not filed appeal in this matter.

4. The Petitioner had filed a petition before the Commissioner of Commercial Taxes on 10.02.2004 against the recovery notice issued by the Commercial Tax Officer, Dindigul-III Assessment Circle with a request to waive the total Tax, Additional Sales Tax and Penalty amounting to Rs.19,77,910/- under section 17(4) of the Tamil Nadu General Sales Tax Act, 1959 for the years 1990-1991 and 1991-1992. This petition was examined and rejected by the Commissioner of Commercial Taxes, in his letter second read above, by stating that the request for waiver is not capable of compliance.

5. Against the above order dated 08.02.2005, Tvl.Khader Spinners Private Limited, Dindigul had filed a Writ Petition No.5605 of 2005 before Hon'ble Madurai Bench of High Court of Madras. In the said affidavit filed by

them, it was submitted that they had not preferred any appeal, but however they had challenged the assessment by way of filing an Original Petition before the Tamil Nadu Taxation Special Tribunal and the order of the Tamil Nadu Taxation Special Tribunal was not communicated to them and hence they had not proceeded further in the matter and therefore requested to quash the rejection order dated 08.02.2005 passed by the Commissioner of Commercial Taxes and direction to the Government to consider their application dated 10.02.2004 filed under section 17(4) of the Tamil Nadu General Sales Tax Act, 1959. The Hon'ble High Court, in its order third read above, disposed of the above Writ Petition with the following directions:

*"As per the above provision, the Government is empowered to give exemption either in public interest or to mitigate the hardship to the trader. If the traders express their grievance as to their tax liability, the Government has to consider the same having regard to the circumstances stated by the traders. While considering the grievance, the Government has to take into consideration of the public interest involved and the circumstances under which the hardship stated to be caused to the traders and dispose of the same, by giving reasons as per the provision. It is trite to state that in a quasi judicial orders, reasons are blood and flesh. But, the order impugned contains no reason except pointing out that the petitioner was ignorant of the Government Order. The reason so stated cannot be regarded as consideration of the case as required under the provision. Hence, the impugned order is liable to be set aside and the same is hereby set aside and the matter is remitted back to the Secretary to Government, Commercial Taxes Department, who is empowered to consider the hardship of the petitioner with reference to the statutory provision and pass appropriate orders.*

6. Further, another Writ Petition was filed by Tvl.Khader Spinners Private Limited, Dindigul before the Madurai bench of Madras High Court in W.P. No.5127 of 2005 on the very same grounds raised in the W.P. No.5605 of 2005. This Writ Petition was also disposed of by the Hon'ble High Court, in its order fourth read above, with the following directions:-

*"The impugned order is hereby set aside and the matter is remitted back to the Secretary to Government, Commercial Taxes Department, who is empowered to consider the hardship of the petitioner with reference to the statutory provision and pass appropriate orders."*

7. The Principal Secretary / Commissioner of Commercial Taxes has informed that in an identical issue, in the batch cases which were filed against the disallowance of exemption claimed/disallowed as the inter-State purchases of cotton bales effected from the Federation's Godown at Coimbatore (i.e., The Maharashtra State Co-operative Marketing Federation Limited, Bombay) under the mode of Godown delivery system which were assured as inter-State purchases liable to tax at the point of last purchase in this state by the Assessing Officers, the Full Bench, Tamil Nadu Taxation Special Tribunal (decision reported in 118 STC p.77), in its decision dated 01.11.1999, held that the transactions were not taxable in Tamil Nadu as local purchases and allowed the cases filed by the dealers against the above judgment before the Hon'ble High Court of Madras. Hence, the above judgment had become final and all the dealers who were adopting the above mode of purchases have become eligible for exemption from purchase



tax at the point of last purchase in this State. The Principal Secretary/Commissioner of Commercial Taxes has also informed that the Department has not filed any appeal.

8. The Original Petition No.984 of 1996, which was filed by the petitioner was dismissed by the Tamil Nadu Taxation Special Tribunal well before the date of judgment of the Full Member Bench. If, the above judgment had been brought to the knowledge of the Madurai Bench of the Hon'ble Madras High Court, while disposing the Writ Petition No.5605 of 2005, which was filed by the Petitioner, the Hon'ble High Court may have also allowed the Writ Petition instead of disposing of the Writ Petition with the remittance observation on 02.07.2007. Since the identical issue had been allowed in favour of the other dealers by the Tamil Nadu Taxation Special Tribunal by its order dated 01.11.1999 subsequent to the dismissal of the O.P.No.984 of 1996 filed by Tvl.Khader Spinners Private Limited, Dindigul, the revision of assessment made on the petitioner by disallowing the inter-State purchases of cotton bales and re-assessed as local purchase of cotton bales and assessed to tax at the point of last purchase by the Department were also eligible for exemption based on the above decision. Hence, the entire demand accrued due to revision of assessment on the said transactions under section 16(2) of the said Act for the assessment years 1990-1991 and 1991-1992 were to be treated as erroneous demands and requires to be eliminated. The Principal Secretary/Commissioner of Commercial Taxes has informed that the arrears in respect of original assessments and subsequent revision of assessments under section 16(2) are still shown as pending as per available records. The arrear position for the assessment years 1990-1991 and 1991-1992 under the Tamil Nadu General Sales Tax Act, 1959 in respect of Tvl.Khader Spinners Private Limited, Dindigul are as below:-

TNGST No/ Year	Date of order	Tax	AST	Penalty	Total
521246/1990-1991	05.01.1996	3,36,498/-	1,12,166/-	6,72,966/-	11,21,630/-
521246/1991-1992	11.03.1996	2,56,875/-	85,625/-	5,13,750/-	8,56,250/-
Total	-	5,93,373/-	1,97,791/-	11,86,716/-	19,77,880/-

9. Accordingly, the Principal Secretary/Commissioner of Commercial Taxes, in the reference sixth read above, had sent proposals to Government for waiver of an amount of Rs.19,77,880/-, being the tax, additional sales tax and penalty payable by Tvl.Khader Spinners Private Limited, on the transaction involved on the disallowance of exemption claimed/disallowed on the inter-State purchases of cotton bales effected from the Federation's Godown at Coimbatore (i.e., The Maharashtra State Co-operative Marketing Federation Limited, Bombay) under the mode of godown delivery system by the Assessing Officer under the Tamil Nadu General Sales Tax Act, 1959.

10. The Waiver Committee has agreed to the proposal to waive a sum of Rs.19,77,880/- (Rupees nineteen lakhs seventy seven thousand eight hundred and eighty only) under the Tamil Nadu General Sales Tax Act, 1959

payable by Tvl.Khader Spinners Private Limited, Dindigul for the assessment years 1990-1991 and 1991-1992.

11. The Government, after careful examination, have decided to accept the recommendations of the Waiver Committee. Accordingly, in exercise of the powers conferred under item 7 of Appendix 21 of Chapter XII of the Tamil Nadu Financial code Volume-II, the Government waive a sum of Rs.19,77,880/- (Rupees nineteen lakhs seventy seven thousand eight hundred and eighty only), being the tax, additional sales tax and penalty under erstwhile Tamil Nadu General Sales Tax Act, 1959, payable by Tvl.Khader Spinners Private Limited, Dindigul for the years 1990-1991 and 1991-1992 on the transactions involved on the disallowance of exemption claimed/disallowed on the inter-State purchases of cotton bales effected from the Federation's Godown at Coimbatore (i.e., The Maharashtra State Co-operative Marketing Federation Limited, Bombay) under the mode of Godown delivery system by the Assessing Officer.

12. This order issues with the concurrence of Finance Department vide its U.O.No.3205/Finance Secretary(P)/2022, dated 16.08.2022.

(By Order of the Governor)

B. JOTHI NIRMALASAMY  
SECRETARY TO GOVERNMENT.

To

The Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5.

The Joint Commissioner (Administration), Office of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5.

✓ The Joint Commissioner (State Tax) concerned,  
The Accountant General(Accounts & Entitlements), Chennai-18.  
The Accountant General(Audit), Chennai-18.  
(through the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5)

Copy to:

The Special Personal Assistant to Minister (Finance and Human Resource Management), Chennai-9.

The Special Personal Assistant to Minister (Commercial Taxes and Registration), Chennai-9.


The Private Secretary to the Secretary to Government, Commercial Taxes and Registration Department, Chennai-9.

The Finance(Revenue) Department, Chennai-9.

The Finance(Resources) Department, Chennai-9.

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//Forwarded by Order//

  
24/11/22  
SECTION OFFICER  
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