



ABSTRACT

Waiver – Tamil Nadu Value Added Tax Act, 2006 – Waiver of tax on the sale of Indian made Foreign Liquor, Polythene Colour Granules, Arrack, Fertilizer and REP licence – Orders issued.

COMMERCIAL TAXES AND REGISTRATION (D2) DEPARTMENT

G.O. (2D) No.236

Dated : 16.11.2009

Ayppasi 30, Thiruvalluvar Aandu 2040.

Read:

1. Minutes of the Waiver Committee meeting held on 17.11.2008.
2. From the Principal Secretary / Commissioner of Commercial Taxes Lr. No.DC-II/50620/2008, dated 26.5.2009.

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ORDER:

The Waiver Committee (consisting of the Secretary, Commercial Taxes and Registration Department, the Principal Secretary, Finance Department and the Principal Secretary / Commissioner of Commercial Taxes as its members) in its meeting held on 17.11.2008 considered waiver proposals relating to the following five cases:-

- i) IMFL (Retail Wine Shops)
- ii) Polythene Colour Granules (Master batches)
- iii) Arrack
- iv) Fertilizer and
- v) REP licence – Bilal Hussain and Company.

2. Brief history of the cases and the recommendation of the Committee are as follows:-

(1) IMFL (Retail Wine Shops)

The sale of Indian Made Foreign Liquor was liable to tax at "every point of sale other than last point of sale" with effect from 28.7.1989 as per entry 1 of

the Sixth Schedule to the Tamil Nadu General Sales Tax Act, 1959. The point of levy was changed as "first point of sale and second point of sale" with effect from 15.6.1992. No threshold limit was fixed for levy of tax. Then Sec. 3(2-B) was amended from 12.3.93 wherein turnover limit was fixed as Rs.1 lakh. Regarding Indian Made Foreign Liquor, Distilleries are first sellers and Tamil Nadu State Marketing Corporation are second sellers. When the Tamil Nadu State Marketing Corporation purchasing Indian Made Foreign Liquor from other State and selling to local retail wine shops and star hotels, the retail wine shops / Star hotels are liable to tax at second point of sale on the value addition between first point of sale and second point of sale. Therefore, the assessing officers levied tax on retail wine shops / Star hotels. As the licensee of wine shops are changing from time to time, it is not practically possible to find out the person on whom second point of levy has to be made. The Commissioner of Commercial Taxes has called for waiver proposals in such cases. The proposal relates to 43 dealers involving amount of Rs.23,34,068/- for the period from 15.6.1992 to 11.3.1993 under the Tamil Nadu General Sales Tax Act, 1959. Out of which, 40 dealers are wine shop owners and 3 dealers are hoteliers. The dealers have not collected tax. The Committee agreed with the view that the retail wine shop dealers are eligible for waiver of the tax assessed to the tune of Rs.14,61,896/- under Tamil Nadu General Sales Tax Act, 1959 for the period from 15.6.1992 to 11.3.1993 and in respect of other 3 dealers who are hoteliers, the Commissioner of Commercial Taxes will re-examine the issue and send proposals to Government, if necessary.

(2) Polythene Colour Granules (Master batches)

Polythene Colour Granules (Master batches) were taxed at 3% as plastic raw materials under entry 16 of part B of First Schedule from 1.4.1993 to 16.7.1996 and at 4% from 17.7.1996. But the Commissioner of Commercial Taxes has clarified in Acts Cell V / 23253 / 98 dt. 21.7.98 that, the plastic colours are nothing but plastic dyes liable to tax at 8% under entry No.16 (ix) of Part C of First Schedule to TNGST Act, 1959 from 17.7.1996. From 1.4.93 to 16.7.1996 the corresponding entry is 49 (ix) of Part C of First Schedule to TNGST Act, 1959 liable to tax at 5%. The difference of tax at 2% for the period from 1.4.93 to 16.7.1996 and 4% for the period from 17.7.1996 to 20.7.1998 deserves to be waived as the dealers have not collected tax at higher rate. The Committee agreed with the waiver proposal for the differential rate of tax of Rs.37,35,262/- sent by the Commissioner of Commercial Taxes under Tamil Nadu General Sales Tax Act, 1959 for the period from 1.4.1993 to 20.7.1998.

(3) Arrack

The rate of tax on the sale of arrack under TNGST Act, 1959 was enhanced from 6% to 25% with effect from 26.3.1985 and the same was published

in the Govt. Gazette only on 30.3.85. Since the dealers were not aware of the enhancement of tax till it was published in the Gazette, they did not collect the tax and surcharge at the enhanced rate from 26.3.85 to 29.3.85 (i.e. for 4 days). Hence, the Commissioner of Commercial Taxes, had sent waiver proposals to Govt. for the differential rate of tax being at 19% (25% - 6%) in respect of arrack dealers who had not collected the enhanced rate for the above period. The committee agreed with the proposals sent by the Commissioner of Commercial Taxes for the waiver Tax Rs.15,64,159/- and Surcharge Rs.49,920/- assessed for the period from 26.3.1985 to 29.3.1985.

(4) Fertilizer

Food Corporation of India were assessed to tax on their distribution of Imported Fertilizers made to State Government and its nominee for the period from 1969-70 to 1971-72. The director of Agriculture in his letter No.TVC-1/185273/1999, dated 4.7.2000 recommended to Tamil Nadu Government (after obtaining a certificate from Food Corporation of India to the effect that no tax was collected prior to 1.4.1972) to consider Food Corporation of India's request for waiver. When Food Corporation of India tried to collect sales tax from State Government, they had processed the same and taken up the matter with the Govt. of India. Since the entire supply of fertilizer by the Food Corporation of India was made to the State Government and its nominee, any tax liability has to be borne by the State Government as no tax was collected by the Food Corporation of India. If the Commercial Taxes Department of Government of Tamil Nadu insists Food Corporation of India in turn will claim the tax amount from Agriculture Department of Government of Tamil Nadu to remit to Commercial Taxes Department.

Considering the above, the Committee agreed with the view that the dealers are eligible for waiver of tax Rs.42.05 lakhs assessed under Tamil Nadu General Sales Tax Act, 1959 for the period from 1969-70 to 1971-72.

(5) REP licence - Bilal Hussain & Company

Tvl. Bilal Hussain & Co. are in arrears of Tax, Surcharge, Additional Surcharge, Additional Sales Tax and penalty of Rs.86,05,660/- for the period from 89-90 to 97-98 on the sale of REP licence. They have requested waiver of tax and other amount citing the decision of the Supreme Court reported in 145 STC 576 (Sunrise Associates, Delhi) in support of the petitioners stating that the sale of REP licence is not liable to tax on par with sale of lottery tickets. Actually, in 145 STC 576, the Supreme Court has dealt with the tax liability on the sale of lottery tickets and not REP licence. The Supreme Court in Vikas Sales Corporation's case, has upheld the levy of tax on the sale of REP licence as they

are goods. In 17 VST 182, in the case of Yasha Overseas and Commissioner of Sales Tax, the Supreme Court has held that the decision in Vikas Sales Corporation continues to hold the field. In view of the above, the request of the petitioners for the waiver of Tax, Surcharge, Additional Surcharge and Additional Sales Tax are not acceptable and liable to be rejected. In respect of penalty, in P.S. Apparel's case 94 STC 139 (Madras High Court) has held that penalty may be levied only from the assessment year 1993-94 onwards. Therefore, penalty levied for the year 89-90 and 90-91 amounting to Rs.24,84,912/- has been taken into consideration for waiver. The Committee agreed with the view that the dealers are eligible for waiver of penalty as Rs.24,84,912/- assessed under TNGST Act, 1959 for the years 1989-90 and 1990-91. The penalty relating to other years are not eligible for waiver.

3. After careful examination, the Government have decided to accept the recommendations of the Waiver Committee and to waive the following amounts:-

- i) Tax of Rs.14,61,896/- under the Tamil Nadu General Sales Tax Act payable by retail wine shops for the period from 15.6.1992 to 11.3.1993.
- ii) Tax of Rs.37,35,262/- under the Tamil Nadu General Sales Tax Act, 1959 for the period from 1.4.1993 to 20.7.1998 in respect of Polythene colour granules (Master batches).
- iii) Tax of Rs.15,64,159/- under the Tamil Nadu General Sales Tax Act, 1959 and Surcharge of Rs.49,920/- assessed for the period from 26.3.1985 to 29.3.1985 in respect of sale of arrack.
- iv) Tax of Rs.42.05 lakhs assessed under the Tamil Nadu General Sales Tax Act, 1959 payable by the Food Corporation of India for the period from 1969-1970 to 1971-1972.
- v) Penalty amount of Rs.24,84,912/- under the Tamil Nadu General Sales Tax Act, 1959 for the years 1989-1990 and 1990-1991 in respect of Tvl. Bilal Hussain and Company.

4. The Notifications appended to this order will be published in the next issue of the Tamil Nadu Government Gazette.

5. This order issues with the concurrence of Finance Department vide its U.O.35017/Revenue/2009 dated 24.6.2009.

(By Order of the Governor)

RAJEEV RANJAN
PRINCIPAL SECRETARY TO GOVERNMENT.

To

The Works Manager, Government Central Press, Chennai-79.

(for publication of the Notification in the next issue of the Tamil Nadu Government Gazette).

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

The Accountant General, Chennai-18

The Accountant General, Chennai-35

The Accountant General (CAS), Chennai-9

The Accountant General, Chennai-6

The Commercial Taxes and Registration (D2) Department , Chennai-9

(for taking action to place it on the Table of the House)

Copy to:

The Finance (Revenue) Department, Chennai-9

The Law Department, Chennai-9

S.F. / S.Cs.

// Forwarded / By order //

SECTION OFFICER.

APPENDIX
NOTIFICATION - I

In exercise of the powers conferred by section 31 read with sub-section (4) of section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby remits a sum of Rs.14,61,896/- (Rupees fourteen lakhs sixty one thousand eight hundred and ninety six only) being the tax payable on the second point of sale of Indian Made Foreign Liquor purchased from the Tamil Nadu Marketing Corporation Limited by the retail wine shop owners in respect of the period from the 15th June 1992 to the 11th March 1993 under the said Act.

NOTIFICATION - II.

In exercise of the powers conferred by section 31 read with sub-section (4) of section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), and read with sub-section (2) of section 3 and sub-section (2) of section 3-A of the erstwhile Tamil Nadu Sales Tax (Surcharge) Act, 1971 (Tamil Nadu Act 24 of 1971), the Governor of Tamil Nadu hereby remits a sum of Rs.37,35,262/- (Rupees thirty seven lakhs thirty five thousand two hundred and sixty two only) being the difference of tax at 2% for the period from 1.4.1993 to 16.7.1996 and consequential surcharge and additional surcharge and difference of tax at 4% for the period from 17.7.1996 to 20.7.1998 and penalty payable on the sale of Polyethylene colour granules (Master Batches) under the said Acts.

NOTIFICATION - III.

In exercise of the powers conferred by section 31 read with sub-section (4) of section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), and read with sub-section (2) of section 3 of the erstwhile Tamil Nadu Sales Tax (Surcharge) Act, 1971 (Tamil Nadu Act 24 of 1971), the Governor of Tamil Nadu hereby remits the difference of tax between 25% (twenty five percent) and 6% (six percent) and surcharge amounting to Rs.16,14,079/- (Rupees sixteen lakh fourteen thousand and seventy nine only) payable by the dealers on the sale of arrack in respect of the period from the 26th March 1985 to 29th March 1985 under the said Acts.

NOTIFICATION - IV.

In exercise of the powers conferred by section 31 read with sub-section (4) of section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), and read with sub-section (2) of section 3 of the erstwhile Tamil Nadu Sales Tax (Surcharge) Act, 1971 (Tamil Nadu Act 24 of 1971), the Governor

of Tamil Nadu hereby remits a sum of Rs.42,05,989/- (Rupees forty two lakhs five thousand nine hundred and eighty nine only) being the tax and surcharge payable on the sale of fertilizers by Tvl. Food Corporation of India, Chennai in respect of the years 1969-70 to 1971-72 under the said Acts.

NOTIFICATION - V.

In exercise of the powers conferred by section 31 read with sub-section (4) of section 88 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby remits a sum of Rs.24,84,912/- (Rupees twenty four lakhs eighty four thousand nine hundred and twelve only) being the penalty payable on the sale of REP licence by Tvl. Bilal Hussain and Company, Chennai in respect of the period 1989-90 and 1990-91 under the said Act.

RAJEEV RANJAN
PRINCIPAL SECRETARY TO GOVERNMENT.

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