



### **ABSTRACT**

Waiver - Commercial Taxes Department - Waiver of tax and penalty on the sale of Maize Starch for the period from 01.09.1994 to 22.06.1998 under the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956 - Orders- Issued.

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

**G.O. (2D) No.114**

**Dated:08.12.2022**

**சுபகிருது, கார்த்திகை - 22**

**திருவள்ளூர் ஆண்டு, 2053**

Read:

From the Principal Secretary/ Commissioner of Commercial Taxes Letter No.VA-5(DC-11)/65530/1998, dated 27.05.2020 and 07.05.2022

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### **ORDER**

The Notification No.89 of 1970, dated 14.03.1970 which was in force till 31.03.1994 exempted all sales of products of millets (like rice, flour, broken and bran of cholam, cambu, ragi, thinai, varagu, samai, kudiraivali, milo and maize). Thereafter, the products of millets (rice, flour, broken and bran of cholam, ragi, thinai, varagu, samai, kudiraivali, milo and maize) were exempted with effect from 01.04.1994 by way of amendment to Entry 8 in Part B of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959 - vide Tamil Nadu Act 32 of 1994. As per the amended Entry 8 of Part-B of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, maize starch was made taxable from 01.04.1994 for the reasons that entries in Entry 8 of Part-B of the Third Schedule to the said Act did not include maize starch and further under Entry 61 of Part-B of the First Schedule to the said Act, the Commodities Sago and Starch of any kind was made taxable at 4%. Though Entry 8 of Part-B of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959 referred to the products of millets including Maize, but when there was a special entry for starch of all kinds in

Entry 61 of Part-B of the First Schedule to the said Act, the same will prevail over the general entry.

2. The Accountant General had also raised an audit objection by stating that maize starch was not eligible for exemption and the same was taxable at 5% for the period from 12.03.1993 to 31.03.1994. Subsequently, during the year 1995-1996, this issue was also placed before the Public Accounts Committee as para 2.2.2. Hence, in Notification No.II(1)/CTR/58 (h-7)/2006, dated 30.12.2006 published in Tamil Nadu Government Gazette Extraordinary No.369, dated 30.12.2006 exemption was granted in respect of the tax payable by any dealer under the Tamil Nadu General Sales Tax Act, 1959 on the sale of products of millets (like rice, flour, brokens and bran of cholam, cumbu, ragi, thina, varagu, samai, kudiraivali, miio and maize) for the period from 12.03.1993 to 31.03.1994.

3. The Commissioner of Commercial Taxes had issued the following clarifications under section 28A of the Tamil Nadu General Sales Tax Act, 1959 based on the request made by the dealers in respect of " Maize Starch":-

- (i) In K. Dis. Acts Cell-V/88665/96, dated. 31.12.1996 and K. Dis. Acts Cell-II/26344/97, dated.6.5.1997, it was clarified under Section 28A of Tamil Nadu General Sales Tax Act, 1959 that sale of maize starch is exempt from tax under Entry 8 of Part-B of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959.
- (ii) Subsequently, in D.Dis. Acts Cell-II/31417/98, dated 23.06.1998, clarification was issued under Section 28-A of the Tamil Nadu General Sales Tax Act, 1959, clarifying that Maize Starch will fall under residuary Entry 67 of Part-D of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, liable to tax @ 11% with effect from 17.07.1996.
- (iii) Again, in the clarification issued in Acts Cell-II/65530/98, dated 08.10.1998, it has been clarified that Maize Starch was taxable @ 4% under Entry 61 of Part-B of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, canceling the earlier clarification issued on 23.06.1998. In this clarification, it was also stated that maize starch was taxable from 01.04.1994, as the item 8 of Part-B of the Third Schedule does not include maize starch.

4. In the letter read above, the Principal Secretary/Commissioner of Commercial Taxes has stated that representations were received from the dealers subsequently with a request to give prospective effect to the clarification dated 23.06.1998, if the view on the levy of tax on the sales of maize starch was not reversed and stated that the request was found to be reasonable as it was already clarified vide K. Dis. Acts Cell-V/88665/96, dated. 31.12.1996 and K. Dis. Acts Cell-II/26344/97, dated.06.05.1997 that maize starch was exempted as those falling under Entry 8 of Part-B of Third Schedule to the said Act on 31.12.1996 and 06.05.1997. Hence, the Commissioner of Commercial Taxes had requested the Government to issue necessary orders by directing the Assessing Officers on the following:-

- (i) To assess maize starch from the assessment year **1998-99 onwards (i.e., from 23-06-1998)**
- (ii) Not to reopen past completed assessments.
- (iii) To complete pending assessments based on the revised clarification and send waiver proposal wherever the dealers have not collected tax.

5. Considering that revised clarifications had been issued by the Commissioner of Commercial Taxes office from time to time i.e., from 1993 to 1998, holding different views on the levy of tax on the sales of maize starch, the Commissioner of Commercial Taxes was requested to work out the exact amount required to be waived in this regard.

6. During the course of the issue, the Hon'ble Madras High Court in its order dated 08.09.2008 in W.P. No.14283 of 1999 in the case of Tvl. Santhosh Maize & Industries Limited Vs. State of Tamil Nadu and others [**reported in 18 VST P. 111**], has directed as follows:-

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*".....In as much as sago and starch of any kind are classified in entry 22(vi) of Part B of the First Schedule to be taxable at four per cent on the first sale with effect from June 17, 1996 and entry No. 44 of the Third Schedule does not include maize starch as being exempt from tax, the petitioner was liable to pay tax at four per cent and could not claim exemption. The circular dated October 8, 1998 required no interference.*

*It is well-settled in law that a Schedule to the Act is part of the Act itself and as such it has statutory force....."*

7. By the above decision the Hon'ble High Court of Madras has held that maize starch is taxable at 4% and the validity of the Circular (Clarification) dated 08.10.1998 was also upheld.

8. Considering the fact that certain dealers had not collected any tax on their sales of maize starch for the period from 1.4.1994 to 22.6.1998 based on the clarification issued by the Commissioner of Commercial Taxes at various dates and as per the certificates issued by the respective Joint Commissioners, the Principal Secretary/ Commissioner of Commercial Taxes had sent proposal to Government for consideration of waiver of an amount of Rs.22,07,603/- being a sum of Rs.19,64,921/- towards tax and penalty under the Tamil Nadu General Sales Tax Act, 1959 and a sum of Rs.2,42,682/- towards tax under the Central Sales Tax Act, 1956 for the period from 01.04.1994 to 22.06.1998.

9. The Waiver Committee has agreed for a waiver of Rs.22,07,603/-, being a sum of Rs.19,64,921/- towards tax and penalty under the Tamil Nadu General Sales Tax Act, 1959 and a sum of Rs.2,42,682/- towards tax under the Central Sales Tax Act, 1956 on the sale of Maize Starch for the period from 01.04.1994 to 22.06.1998.

10. After careful examination, the Government have decided to accept the recommendation 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 is decided to waive an amount of Rs.22,07,603/- (Rupees twenty-two lakhs seven thousand six hundred and three only), being a sum of Rs.19,64,921/- towards tax and penalty under the Tamil Nadu General Sales Tax Act, 1959 and a sum of Rs.2,42,682/- towards tax under the Central Sales Tax Act, 1956, payable on the sale of Maize Starch for the period from 01.04.1994 to 22.06.1998 by certain dealers in Chennai (North), Salem and Coimbatore Divisions as indicated below:-

Division	Name of the Dealer	(Amount in Rs.)				
		TNGST Act, 1959		CST Act, 1956		
		1997-1998	1998-1999 (upto 23.06.98)	1997-1998	1998-1999 (upto 23.06.98)	
	Tax	Penalty	Tax	Tax	Tax	
Chennai North	Arumugam & Co	165366	6293	39748	1191	570
	Palaniappa & Co	5040	0	0	0	0

Salem	K.B. Enterprises	1076419	0	272509	52227	22755	
	Sri Ayyappa Traders	97207	0	0	0	0	
Coimbatore	Arihant Traders	0	0	0	0	27632	
	Dora Agencies	0	0	0	120884	0	
	Unique Enterprises	302339	0	0	17423	0	
Total		1646371	6293	312257	191725	50957	<b>2207603</b>
			19,64,921		2,42,682		

11. This orders does not require the concurrence of Finance Department vide its G.O.(Ms)No.334, Finance (BG-I) Department, dated 22.10.2022.

(By Order of the Governor)

B.JOTHI NIRMALASAMY  
SECRETARY TO GOVERNMENT.

To

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

✓ The Joint Commissioners (State Tax) concerned,  
The Accountant General(Accounts & Entitlements), Chennai-18.  
The Accountant General(Audit), Chennai-18.

(through the Principal Secretary/ Commissioner of Commercial Taxes, 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//

  
12/12/22  
SECTION OFFICER  
12/12/22