

**DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/S.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.**

Members present are:

1. R. Rajasekharan Nair, Deputy Commissioner (Audit & Inspection), O/o.CCT, Tvpm.
2. A. Biji Kumari Amma, Deputy Commissioner (Legal Wing), O/o.CCT, Tvpm.
3. A. Asok Kumar, Deputy Commissioner (Internal Audit), O/o.CCT, Tvpm.

Sub: KVAT Act, 2003 – Clarification U/s.94 – Sale to the Unit Situated in SEZ and Eligibility for Exemption - Orders Issued.

Ref: Application from M/s Petronet LNG Ltd., Kochi dated 26/11/2009.

Order No.C3/48451/09/CT DATED 17/3/2010.

1. M/s Petronet LNG Ltd., Kochi has preferred an application under Section 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on whether the sale to the applicant will be exempt on the ground that the applicant is an establishment in Puthuvypeen SEZ.

2. The applicant is a Joint Venture of Public Sector Companies like ONGC, IOCL, BPCL and GAIL having its registered office at New Delhi and unit at Gujarat. The applicant is engaged in the business of import and storage of Liquefied Natural Gas and re-gasification of LNG into Re-gasified LNG.

3. The applicant contends that the Ministry of Commerce and Industry (Department of Commerce) vide Notification No. SO 1835(E) dtd 29/12/2005 has notified Puthuvypeen as a Special Economic Zone. The Ministry vide letter dtd 18/4/06 issued formal approval to Cochin Port Trust and appointed them as the Developer to set up a port based SEZ over an area of 285 hectares in Puthuvypeen. The applicant was also approved as Co-Developer by the Ministry vide letter dtd 14/2/07 for providing infrastructure facilities in the port based SEZ at Puthuvypeen.

4. The applicant contends that they are constructing ‘LNG receiving and re-gasification facility with a capacity to import, store and re-gasify 5MMTPA of LNG’ at Puthuvypeen. The applicant intends to execute the above works by awarding contracts to various contractors. The applicant has referred the meaning of the terms Developer and Co-Developer as per Section 3 of the SEZ Act and contends that the general conditions for approval of the Developer and Co-developer are almost same and the only extra condition stipulated for a Developer in comparison with Co-developer is that the Developer shall make adequate provision for rehabilitation of the displaced persons.

5. The applicant contends that the Co-developer has been granted the approval to carry out the following functions viz:

- (i) provide any infrastructural facilities in the identified area; or
- (ii) undertake any authorised operations.

6. The applicant has also referred the definitions of the terms infrastructure facilities, infrastructure and authorized operations as per the SEZ Act. The applicant further contends that

from the letter dtd 11/5/07 wherein they were appointed as Co-developer, the list of authorized operations has been expanded into the following heads viz:

(i) Authorised Operations during construction:

- a. Construction of buildings, boundary walls etc.
- b. Construction of port jetties.
- c. Marine works consisting of mooring dolphins, unloading platforms, gangway tower, walkway bridges, deep sea jetty.
- d. Unloading facilities consisting of LNG unloading arms, unloading lines, vapour return lines.
- e. LNG Storage Tanks- Constructing 2 Nos.
- f. Boil Gas recovery system
- g. Send out facilities like LNG in tank pumps, HP LNG pumps and LNG Vapourisers
- h. Utilities comprising of power supply, fire water and nitrogen generation plant.
- i. Instrumentation Equipments

(ii) Authorised operations during Operation:

Operation and maintenance of an LNG re-gasification Terminal of 2.5 MMTPA (expandable to 5MMTPA) for providing re-gasification services for LNG and marketing and distribution of re-gasified LNG there from. The operation will broadly include:

Port, Jetties; Storage Tanks; Natural Gas/ LNG distribution and interconnecting pipelines; Re-gasification and distribution of gas.

7. The applicant has submitted a briefing on the objectives of establishing SEZ and contends that from the above it is clear that Co-developer is also:

- a. Approved by the Central Government.
- b. Subject to the same terms and conditions as that of a Developer
- c. Is also controlled by the same board.

8. The applicant has referred Section 6(7)(b) of the KVAT Act and contends that the said provision is based on the SEZ policy of the Govt of Kerala to grant tax exemption to developers of the SEZ.

9. The applicant has referred the definition of the term Developer as per the SEZ Act and contends that the pertinent point is whether the meaning of the term used in the KVAT Act can be given the same meaning as in the SEZ Act. The applicant has cited the judgment of the Hon'ble Supreme Court in Commissioner of Income Tax Vs Gwalior Rayon Silk Mfg Co. Ltd (1992) 196 ITR 149 to support his contention. The applicant has also relied on the Hon'ble High Court of Kerala's decision in Girnar Industries Vs CIT (ITA No.100 of 2009 dtd 17/8/09) and contends that applying the ratio of the above judgment since even Section 6(7)(b) has been inserted to promote SEZ units, the term Developer used in the said section has to be given the same meaning as attributed to it in the SEZ Act. Applying the said definition Developer includes Co-developer and therefore the sale (including Works Contract) to a Co-developer is also exempt from tax U/s Section 6(7) (b) of the KVAT Act.

10. The applicant would further contend that the plant of the applicant is situated within the SEZ i.e. it is an establishment situated within the SEZ and hence the sale to the applicant is exempt U/s 6(7)(b) of the KVAT Act. The applicant has requested to clarify whether the sale to the applicant will be exempt on the ground that the applicant is an establishment in the SEZ.

11. The authorised representative of the applicant was heard and the contentions raised were examined.

12. The applicant is a Co-Developer approved by the Ministry of Commerce and Industry (Department of Commerce) (SEZ Section) vide letter dated 14/2/2007. The unit is providing infrastructure facilities in the port based Special Economic Zone at Puthuvypeen, Kochi. As per Section 6(7)(b) of the Kerala Value Added Tax Act, 2003 exemption is granted on sales to Developer/ Industrial units/ Establishments situated in any Special Economic Zone in the state for setting up the unit or use in the manufacture of other goods subject to such conditions or restrictions as prescribed. As the establishment of the applicant is situated within the Special Economic Zone, the sale to the applicant is exempted under Section 6(7)(b) of the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

Deputy Commissioner (A&I)

O/o CCT

Deputy Commissioner (LW)

O/o CCT

Deputy Commissioner (IA)

O/o CCT

To,

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