

**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. T.V. Kamala Bai  
*Joint Commissioner (Law)*  
*Office of the Commissioner of Commercial Taxes, Thiruvananthapuram*

2. Suchala Kumar .S.K  
*Joint Commissioner (General)*  
*Office of the Commissioner of Commercial Taxes, Thiruvananthapuram*

3. C. Lalappan  
*Joint Commissioner (Audit & Inspection)*  
*Office of the Commissioner of Commercial Taxes, Thiruvananthapuram*

Sub:- KVAT Act, 2003 – Clarification U/s.94 – Sale of rubber to an industrial unit situated in a Special Economic Zone outside the State of Kerala and eligibility to set-off the input tax paid and eligibility to get refund – Clarified - Orders issued.

Read:- Application from M/s.Ind Rubber Trades, Kottayam dtd.05-03-2013.

**ORDER No.C3/6639/13/CT DATED 30/08/2013**

1. M/s. Ind Rubber Trades, Kottayam has preferred an application U/s. 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on Sale of rubber to an industrial unit situated in a Special Economic Zone outside the State of Kerala and eligibility to set-off the input tax paid and eligibility to get refund of input tax paid under Section 13 of the Act.

2. The applicant is registered as a dealer under the provisions of the Kerala Value Added Tax Act, 2003 borne on the rolls of the Office of the Assistant Commissioner, Commercial Taxes, Special Circle, Kottayam and is engaged in the trading of natural rubber. The applicant has been claiming refund of input tax in relation to the sales made by it to industrial units in the Special Economic Zones within and outside the State. In support of the claim of exemption in respect of the sales the applicant has been submitting the declarations prescribed under the Kerala Value Added Tax Act or the Central Sales Tax Act, as the case may be. The applicant has been claiming input tax credit in respect of the tax paid by it on purchases in relation to the sales to such SEZ units against the VAT liability and has also been claiming refund of input tax under Section 13 which is now objected to by the assessing authority which necessitated application under Section 94 of the Act.

3. The applicant would contend that as per Section 13(1) of the Kerala Value Added Tax Act, 2003, a sale in the course of export is a zero rate sale. Section 2(lvii) of the Act defines “zero rate sale” to mean “..... the sale of any goods on which no tax is chargeable but in relation to which input tax credit or refund of input tax paid is admissible.” Under sub-section (2) of Section 13 of the Act input tax paid in relation to a sale in the course of export shall be eligible for refund. As per the Explanation under the section, a sale in the course of export means a sale falling under sub-section (1) or sub-section (3) of Section 5 of the Central Sales Tax Act, 1956. Sub-section (1) and sub-section (3) of Section 5 of the Central Sales Tax Act read as follows:

*“(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title of the goods after the goods have crossed the customs frontiers of India.*

*“(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India, shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.”*

4. The applicant would also contend that under the Customs Act, read with clause (m) of Section 2 and Section 51 of the Special Economic Zone, 2005, a sale to an industrial unit in the Special Economic Zone is deemed to be an export. As per clause (m) of section of the Special Economic Zone Act, 2005, “export” means:

*“(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or*

*(ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or*

*(iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone, the Domestic Tariff Area to a Unit or Developer;”*

5. Further Section 51 of the Special Economic Zone Act reads:

*“51. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

6. So, where Explanation under Section 13 says that a sale in the course of export means a sale falling under sub-section (1) or sub-section (3) of Section 5 of the Central Sales Tax Act, 1956, it automatically covers sales from the Domestic Tariff Area to a unit in the Special Economic Zone, in the light of the provisions of the Special Economic Zone Act, which have overriding effect over all other law in force in the Country.

7. The applicant placing reliance on the clarification order No.C3-31297/07/CT dated 15/9/2007 would contend that it is in tune with the provisions of Section 13 of the Kerala Value Added Tax Act, 2003 read with sub-section (1) or sub-section (5) of the Central Sales Tax act, 1956 and clause (m) of Section 2 and Section 51 of the Special Economic Zone Act, 2005. As such they are eligible to set off the input tax paid on the rubber sold to an industrial unit situated in a Special Economic Zone located outside the State of Kerala against the output tax under Kerala Value Added Tax Act, 2003 and also to get refund of the input tax paid on the rubber so sold under Section 13 of the Kerala Value Added Tax Act, 2003. The applicant would also contend that taking a different stand will be ultra-vires the provisions of the Central Sales Tax Act and the Special Economic Zone Act.

8. The applicant has requested to clarify the following points:

- i. Is not a dealer making sales of rubber to an industrial unit situated in a Special Economic Zone located outside the State of Kerala entitled to set off the input tax paid by him on the rubber so sold, against his output tax under the Kerala Value Added Tax Act, 2003?
- ii. Is not a dealer making sales of rubber to an industrial unit situated in a Special Economic Zone located outside the State of Kerala entitled to get refund of input tax paid by him on the rubber so sold under section 13 of the Kerala Value Added Tax Act, 2003?

9. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

10. The matter is discussed as follows:

To provide for the legislation authorized by the Constitution as amended by the Constitution (Sixth Amendment) Act, 1956, the Central Sales Tax Bill was introduced in the Parliament. As per the referred constitutional amendment, Article 286(1)(b) of the Constitution states that no law of a State shall impose, or authorize the imposition of a sales tax on the sale or purchase of goods when

such sale or purchase takes place in the course of export of goods. Article 286(2) prohibits imposition of sales tax on import and export by the State Government. Article 286(2) authorizes the Parliament to formulate principles for determining when sale is in the course of import/export. This is the object and reason for which section 5 justifies its place in the Central Sales Tax Act.

11. As per the Statement of Objects and Reasons of the Special Economic Zone Act, 2005:

*“In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones has been found to be necessary in line with international practice. To achieve this purpose, a "Special Economic Zones Bill, 2005" is proposed. The salient features of the Bill are as under:--*

*(i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;*

*(ii) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;*

*(iii) the fiscal regime for developers of Special Economic Zones and units set up therein;*

*(iv) single window clearance mechanism at the Zone level;*

*(v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and*

*(vi) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones;*

*4, The Bill seeks to achieve the aforesaid objects.”*

12. With regard to the entitlements to Special Economic Zone, as per chapter VI [Sec.26] of the Special Economic Zones Act [Special Fiscal Provisions for Special Economic Zones]

*“26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: -*

*(a) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;*

*(b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India:*

- (c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;*
  - (d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;*
  - (e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;*
  - (f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;*
  - (g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.*
- (2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1)."*

13. While the Rules made under the Special Economic Zones Act has made provisions for Clauses(a) to (f) mentioned above, with respect to Clause (g), as the amendment in the Central Sales Tax Act was the only way to implement the same, the Central Government vide Union Finance Act, 2004 has incorporated sub-sections (6) (7) and (8) in Section 8 of the Central Sales Tax Act. So, the term 'export' as defined in the said Act will have relevance to the Rules made under Clauses (a) to (f) of Section 26(1) of the Special Economic Zone Act. Also, there is no non-obstante clause to over ride the definition of export in the Central Sales Tax Act provisions with regard to Central Sales Tax Act. In the circumstances, there is no repugnancy between the provisions of the Special Economic Zone Act and the Central Sales Tax Act. The above statutory provisions would show that the dealer in Kerala making sale of commodities to an industrial unit situated in a Special Economic Zone located outside the State of Kerala is an interstate sale, which is exempted subject to certain conditions enumerated in sub-section (7) and (8) of Section 8, of Central Sales Tax Act. Had there been no exemption in the Central Sales Tax Act vide sub-section (7) and (8) of Section 8 of Central Sales Tax Act, this sale would have been taxable under Central Sales Tax Act.

14. Moreover, as per Section 50 of the SEZ Act

*50. Power of State Government to grant exemption:- The State Government may, for the purpose of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law—*

- (a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;*
- (b) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.*

15. Section 50 is also proof that with respect to sales tax legislation within the domain of the State, the SEZ Act does not override the provisions in the State Sales Tax legislation but, virtually recommends for granting sales tax exemptions / concessions to SEZ by amending their Sales Tax / VAT statutes. So, SEZ Act recognizes the exclusive legislative powers of the States in granting sales tax exemption to SEZ units.

16. As per Section 51 of the Special Economic Zone Act, *"the provisions of this Act shall have effect notwithstanding anything inconsistent there with contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."* The applicant by virtue of his arguments is pointing out that there is inconsistency in the definition of 'export' in Special Economic Zone Act and as mentioned in the Central Sales Tax Act. The refund provisions relating to export in Section 13 of the Kerala Value Added Tax Act, 2003, refers a sale in the course of export means a sale falling under sub-section (1) or sub-section(3) of Section 5 of Central Sales Tax Act. Hence, Section 13 of Kerala Value Added Tax Act defines export by adopting the definition in Central Sales Tax Act.

17. Hence, the primary inconsistency, if any, pointed out by the applicant by relying on Section 51 of the Act to forward his case, is between the definition of export in Central Sales Tax Act and SEZ Act. There is no inconsistency, as SEZ Act is enacted for a different purpose i.e., to provide for establishment, development and management of SEZ zone for the promotion of export and matters connected therewith or incidental to. Defining exports for the purpose of taxation, taxation of interstate sale, etc. is the domain of Central Sales Tax Act and taxation of sales within the State is in the domain of State legislatures. As such, there is no inconsistency whereby Section 51 of the SEZ Act comes into operation, in this case.

18. So, Central Sales Tax Act and Kerala Value Added Tax Act are enacted within their definitive spheres of legislation. The word 'export' as defined in SEZ Act cannot be imported to interpret export as in the Central Sales Tax Act.

19. In the circumstances discussed in the preceding paragraphs, the following are clarified.

- (a) As such, it is clarified that sale of commodities to an industrial unit situated in a Special Economic Zone located outside the State is an inter-state sale for which, the set-off and refund provisions for an inter-state sale under Section 11, 12 and 13 of Kerala Value Added Tax Act, 2003 will be applicable. On the point, sale to SEZ units outside the State is an interstate sale exempted from tax and so adjustment of input tax, if any, is permissible only in excess of 5% as per third proviso to sec.11(3) of the KVAT Act. With regard to rubber specifically, the provisions of S.R.O. No. 753/2011 will be applicable for interstate sales.
- (b) For the foregoing reasons, it is also clarified that exemptions / concessions to SEZ situated within the State will be governed solely by the provisions to this effect in sub-section (7) of section 6 of the KVAT Act and sale to SEZ will not be deemed export by virtue of interpretations of "export" in the SEZ Act. The clarification No.C3-31297/07/CT dated 15/9/2007, issued earlier is also reconsidered and is modified to the above extent.

20. The issues raised above are clarified accordingly.

T.V. Kamala Bai  
Joint Commissioner (Law)

Suchala Kumar .S.K  
Joint Commissioner (General)

C. Lalappan  
Joint Commissioner (A & I)

To

M/s.S. Anil Kumar, K.S.Hariharan & K. Umamaheswar,  
Advocates  
Haridev Buildings  
Old Railway Station Road, Kochi - 682018