

**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.K. Ziaavudeen.  
*Joint Commissioner (Law),*  
*Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. Dr. A. Bijikumari Amma.  
*Joint Commissioner (A & I),*  
*Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. N. Thulaseedharan Pillai.  
*Joint Commissioner (General),*  
*Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub:- KVAT Act, 2003 – Clarification U/s 94 – Tax liability u/s. 6(2) of the KVAT Act on rubber sold interstate – Orders issued.

Read:-1. Clarification Order No.C3/2378/13/CT dtd.27-11-2013  
2. Judgment of Hon'ble High Court in O.T.(Appeal) Nos. 9 of 2013, 6 & 7 of 2014  
3. Application dtd. 09-11-16 from M/s. N.M.Brothers, Kasargod, M/s. Sachin Traders, Kozhikode and M/s. Arecode Traders, Kozhikode.

**ORDER No.CT/815/17-C3 DATED 22/08/2017**

1. This application for clarification was filed by Sri. Abdulla, Power Attorney Holder of Sri. Sabeer Babu .T.P., Sachin Traders, Kozhikode; Sri.A.M. Rahman, Areacode Traders, Kozhikode and Sri.N.M. Basheer, N.M. Bros., Kasaragod respectively as per the direction of the Hon'ble High Court of Kerala in OTP Nos.6, 7 and 9 dtd.17-10-2016. Originally, Sri. Vinod Kumar.P, STP, Kasargod had preferred an application dtd. 21.01.13, seeking clarification regarding the interstate sale of Natural Rubber and exemption from payment of Central Sales Tax in the light of S.R.O.No.804/2008, & S.R.O.No.753/2011. The applicant had requested to clarify the following points:-

a. Whether interstate sale of rubber procured from the agriculturist can be sold to outside State against C form at 2% in the same month without suffering local VAT.

b. Whether the Natural rubber procured from the registered dealer can be sold interstate against C form at 2% and the excess IPT can be claimed as refund at the end of the year by filing form 21CC.

c. Whether a dealer buying natural rubber from an agriculturist and selling the entire quantity so purchased in the course of interstate trade in the month in which the purchase is made is liable to pay tax u/s. 6(2) where tax @ 2% is collected on interstate sale.

2. Accordingly, as per Order No.C3-2378/13/CT dtd. 27.11.13 it was clarified as follows:

(a) *The dealer has to sell the goods covered under the above SROs to a registered dealer in another State at the CST rate of 0% against C form and shall pay tax u/s. 6(2) of the KVAT Act, 2003 for such goods.*

(b) *Independent to the above stated position (a), under no circumstances, special rebate will be allowed for the commodities covered by the SROs, by which tax has been exempted on interstate sale to registered dealers.*

3. Aggrieved by the order, M/s. Sachin Traders, Kozhikode, M/s. Arecode Traders, Kozhikode and M/s. N.M.Brothers, Kasargod preferred OTA Nos. 6, 7 of 2014 & 9 of 2013 before the Hon'ble High Court of Kerala. The Hon'ble Court vide its judgment dtd. 17.10.2016 set aside the impugned order dtd.27-11-2013 and directed the appellants to mark appearance before the Authority for clarification u/s.94 of the VAT Act for reconsideration of the matter. While disposing the appeal the Hon'ble Court observed as::

*"The short issue that arises for decision is as to whether the eligibility of exemption granted through SRO.No.804/2008 and carried forward through SRO.No.753/2011 is of such nature which makes it compulsory for a dealer to accept the benefit thereof which is an exemption from payments under the Central Sales Tax Act. **If the component of VAT Act that is paid or suffered by the dealer is larger than the amount of benefit that would have accrued by SROs, as regards Central Sales Tax Act, the question would be whether it will be open and available to the dealer to choose as to whether he would take the benefit of the SROs or whether he would choose to pay CST.** Viewed in this angle, we are of the view that the clarification rendered by the authority needs to be deliberated upon further particularly on the issue as to the eligibility of a dealer to insist that he would not take the benefit of the SROs. Incidentally, the question which may crop up during consideration of this issue would also arise while finally answering the clarification sought for before the authority concerned."*

4. As per the direction of the Hon'ble High Court, the above applicants have preferred applications U/s.94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether a dealer buying natural rubber from an agriculturist and selling the entire quantity so purchased in the course of interstate trade in the month in which the purchase is made has to pay tax u/s. 6(2) of the KVAT Act where tax @ 2% is collected on interstate sale.

5. The applicants would contend that as per notification issued in G.O.(P) No.159/2008/TD dated 31-07-2008, which was published as SRO.No.804/2008, exemption had been granted, inter alia, in respect of the tax payable under sub-section (1) and sub-section (2) of section 8 of the Central Sales Tax Act, 1956 on the turnover of interstate sale of natural rubber subject to the condition that the natural rubber has suffered tax under the Kerala Value Added Tax Act, 2003. The Notification reads:

*"In exercise of the powers conferred by sub-section (5) of section 8 of the Central sales Tax Act, 1956 (Central Act, 74 of 1956), the Government of Kerala having satisfied that it is necessary in the public interest so to do, hereby exempt the tax payable under subsection (1) or sub-section (2) of the said section, on the turnover of sale of Natural Rubber coming under Entry 134 of List A of the Third Schedule of Kerala Value Added Tax Act, 2003 (30 of 2004) and tread rubber (HSN 4006.10.00) in the course of inter-state trade or commerce subject to condition that natural rubber in the case of natural rubber including compounded rubber, and natural rubber used in the production of tread rubber in the case of tread rubber have suffered tax under the Kerala Value Added Tax Act, 2003 (30 of 2004)."*

6. Then, as per notification G.O. (P) No.181/2011/TD dated 30-11-2011 (SRO.753/11 dated 30-11-2011) issued in supersession of the notification SRO. 804/08, Government have limited the exemption to the tax payable under section 8(1) of the CST Act and Rubber Latex, including centrifuged latex, has been kept out of the purview of the notification. The said notification reads:

*"In exercise of the powers conferred by sub-section (5) of section 8 of the Central sales Tax Act, 1956 (Central Act, 74 of 1956), and in supersession of the notification issued under G.O. (P) No.159/2008/TD dated 31-07-2008 and published as SRO.804/08 in the Kerala Gazetted Extraordinary No.1651 dated 31st July, 2008, the Government of Kerala having satisfied that it is necessary in the public interest so to do, hereby direct that on the fulfillment of the requirement of sub-section (4) of section 8 of the said Act, no tax shall be payable under subsection (1) of the said section on the interstate sale of Natural Rubber falling under sub-Entry(1) and tread rubber with HSN code 4006.10.00 falling under sub-entry (6) of serial number 134 of List A of the Third Schedule to the Kerala Value Added Tax Act, 2003 (30 of 2004) subject to the condition that such natural rubber or the natural rubber used in the processing, conversion or manufacture of other types of natural rubber and tread rubber mentioned above have suffered tax under the Kerala Value Added Tax Act, 2003 (30 of 2004), and that exemption under this notification shall not be available to all types of rubber latex including centrifuged latex mentioned in sub-entry (1) of serial number 134 of List A of the Third Schedule to the Kerala Value Added Tax Act, 2003 (30 of 2004)."*

So, as per the notifications, exemption in respect of interstate sale is earned only if the goods sold interstate has suffered tax under the KVAT. Tax under the KVAT Act includes tax under sub-section (1) or sub-section (2) of section 6.

7. The applicants would further contend that the general rule of interpretation of statutes is that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said (**Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd. vs. Custodian of Vested Forests** (AIR 1990 SC 1747 at p.1752). In **State of Jharkhand and another vs. Govind Singh** (AIR 2005 SC 294 at p.297) the Hon'ble Supreme Court said:

*"15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an "alert recognition of the necessity not to cross it, an instinctive, as well a strained reluctance to do so."*

8. The applicants have stated that the same stand has been taken by the **Hon'ble Supreme Court in Keshavji Ravji & Co. vs. Commissioner of Income Tax** (AIR 1991 SC 1806), where the Court held:

*"As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfurl the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words use in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature."*

9. The applicants would then argue that the term used in the notification is "have suffered tax under the Kerala Value Added Tax Act, 2003" and not "liable to tax under the KVAT Act". So, where the notification uses the words "have suffered tax under the Kerala Value Added Tax Act,

2003" it only means that the sufferance of the tax under the KVAT Act should precede the interstate sale in respect of which exemption is claimed under the notification. As per sub-rule 22(1) of the KVAT Rules, tax under sub-section (1) or sub-section (2) of section 6 is payable by a dealer on or before the fifteenth, twentieth or twenty fifth of the month following the month to which the tax relates. Unlike in the case of rubber purchased from a VAT dealer, where the selling dealer collects VAT from the buyer at the time of sale itself and the goods suffer tax under the Act, in the case of rubber purchased from a grower, the goods can be said to have suffered tax only when the month of purchase is over and the monthly return is due and the dealer pays tax in accordance with rule 22(1). So, where a dealer makes an interstate sale of rubber purchased by him from a person other than a registered dealer in the month of purchase itself, it cannot be said that the goods have suffered tax under the KVAT Act at the time of making interstate sales and the seller will not be eligible for exemption under SRO.804/08 and SRO.753/11 and he will be liable to pay CST on such sales.

10. The applicants content that as per the 2<sup>nd</sup> proviso to sub-section (1) of section 12 of the KVAT Act, *"where the goods in respect of which tax is payable under sub-section (2) of section 6 is sold in the State or in the course of interstate trade or used in the course of manufacture of taxable goods in the month in which it is purchased, the special rebate allowable in respect of such goods resold or sold in the course of interstate trade or used in the manufacture of goods liable to pay tax under this Act or Central Sales Tax Act, 1956 may be availed in the month itself."* Further, column 7 of Part A (4) of Form 10 also allows exemption for the value of the goods liable to tax under section 6(2), disposed of during the month. Since, in the above case, the dealer making interstate sale in the month of purchase (from a person other than a registered dealer) has already paid CST on such goods, he will be eligible for claiming special rebate in respect of the purchase tax payable under section 6(2) (by claiming exemption in respect of the purchase value of the goods so sold interstate).

11. The applicants further referred to the judgment of the **Hon'ble Supreme Court in State of M.P. And others vs. Indore Iron & Steel Mills Pvt. Ltd.**, wherein the Hon'ble Court has held:

*"The words of the notification dated 8-10-1978 are very clear and cannot be subjected to any construction but one, namely, that only goods upon which entry tax under the Entry tax Act has been paid are entitled to the exemption thereunder. There has to be actual payment. The impact of the entry tax upon the goods for which the exemption sought has to be felt; only then is the exemption available. The use of the word "suffered" makes this plain."*

The term used in the notification is "have suffered tax under the Kerala Value Added Tax Act, 2003". So, it is contended that the above judgment of the apex court squarely applies to the notification as well.

12. The authorised representative of the applicants was heard in the matter and the contentions raised were examined in the light of the judgment of the Hon'ble High Court.

13. Originally one Sri.Vinodkumar .P, Sales Tax Practitioner, Cheruvathoor, had preferred an application on 21-01-2013 under Sec 94 of the KVAT Act seeking clarification on the interstate sale of natural rubber and exemption from payment of central sales tax in the light of the notifications issued as per SRO.No.804/2008 and superseded by SRO.No.753/2011. The specific questions asked by him for clarifications were as follows:

- (a) *whether interstate sale of rubber procured from the agriculturist can be sold to out-side State against 'C' Form at 2% and the excess IPT can be claimed as refund at the end of the year by filing Form 21CC.*
- (b) *whether the Natural rubber procured from the registered dealer can be sold inter-state against 'C' Form at 2% and the excess IPT can be claimed as refund at the end of the year by filing Form 21CC.*
- (c) *Whether a dealer buying natural rubber from an agriculturist and selling the entire quantity so purchased in the course of interstate trade in the month in which the purchase is made is liable to pay tax u/s.6(2) where tax @ 2% is collected on interstate sale.*

14. The clarification authority as per Order No.C3-2378/13/CT dtd.27-11-2013 clarified the above points as under:

*"(a) The dealer has to sell the goods covered under the above SROs to a registered dealer in another State at the Central Sales Tax rate of 0% against 'C' Form and shall pay tax under Sec.6(2) of the KVAT Act, 2003 for such goods.*

*(b) Independent to the above stated position (a) under no circumstances, special rebate will be allowed for the commodities covered by the SROs by which tax has been exempted on interstate sale to registered dealers."*

15. In exercise of the powers conferred under sec.8(5) of the CST Act, the State Government issued notification vide SRO No.804/2008 dt.31-07-2008, whereby exemption was granted in respect of the tax payable, under sub-section (1) or sub-section (2) of sec. 8, on the turnover of sale of natural rubber coming under entry 134 of List A of the third schedule of KVAT Act 2003, and tread rubber (HSN 4006.10.00), in the course of interstate trade or commerce, subject to the condition that natural rubber, in the case of natural rubber including compounded rubber, and natural rubber used in the production of tread rubber, have suffered tax under KVAT Act, 2003.

16. Subsequently, in supersession of the above S.R.O., the State Government issued SRO No. 753/2011 dtd.30-11-2016. This S.R.O. was issued primarily to rectify the mistake that occurred while issuing SRO 804/2008. SRO 804/2008 was issued in violation of sec. 8(5), in as much as the said sub-section authorized the State Government to grant exemption or reduction in the rate of tax, under the CST Act, only in respect of tax payable under sub-section (1) of that section, i.e., in respect of sale to a registered dealer outside the State, and not in respect of tax payable under sub-section (2) of the said section. Further, vide SRO.753/2011, the Government excluded all types of rubber latex including centrifuged latex, which were covered under SRO No. 804/2008, from the purview of exemption.

17. Since sec.8(5) of the CST Act begins with a non obstante clause, a notification, granting exemption or fixing a lower rate of tax, issued under this sub-section will prevail over the rate of tax fixed under sub-section (1) of the said section. In this context the notification issued under Sec.8(5) of the CST Act is mandatory. Therefore, in respect of inter-state sale of rubber by registered dealers from Kerala to registered dealers of other States, the CST rate applicable is 0% with C form and not 2% with C form and should have suffered tax under the KVAT Act.

18. The Commissioner of Commercial Tax issued a Circular vide No.17/2013 dtd.05-10-2013, CCT clarifying the meaning and content of above notification and issued directions for the smooth implementation of the same. The relevant portion is extracted as follows:

*“The rate of tax on interstate sale to registered dealers is fixed as per sub-section (1) of Sec.8 of CST Act. Presently, the tax rate as per sub-sec.(1) of Sec.8 is 2%. Once the State Govt. has notified a lower rate or exemption under sub-sec.(5) of Sec.8 of the CST Act for a commodity, with respect to that State, the rate fixed under sub-sec.(5) will prevail over the rate fixed under sub-sec.(1). Hence, for removal of any doubts, it is clarified that with regard to interstate sale of rubber by registered dealers from Kerala to registered dealers of other States, the CST rate applicable is “0% with ‘C’ Form” not “2% with ‘C’ Form”.*

19. The decision rendered by the Hon’ble Supreme Court of India in the case of State of M.P. & Ors. Vs. Indore Iron and Steel Mills Pvt. Ltd. (1998) 6 SCC 416, is examined with reference to the above notification. The Hon’ble SC held as follows:

*“In our view, the words of the said notification under the States Sales Tax Act are so clear that they leave no doubt whatsoever and Cannot be subjected to any construction but one, namely, that only goods upon which entry tax under the Entry Tax has been paid are entitled to the exemption there under. There has to be actual payment. The impact of the entry tax upon the goods for which the exemption is sought has to be felt; only then is the exemption available. The use of the word “suffered” makes this plain.”*

20. In view of the decision rendered by the Hon’ble Supreme Court, it can be clarified that the word “suffered” used in the notification shall mean “actual payment of tax”. Therefore, in view of the foregoing discussions, notification issued under Sec.8(5) of the Central Sales Tax Act is mandatory and there is no question of input tax credit / special rebate and refund.

21. In view of the notification and the circular issued in this regard, interstate sales of rubber procured from agriculturists should have suffered tax under the VAT Act and the CST rate applicable is 0% with ‘C’ Form. It is further clarified that there shall be no claim of input tax credit / special rebate and no refund of the tax paid on purchase from registered dealers as well as from unregistered dealers as the case may be.

The issues raised above are clarified accordingly.

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O/o CCT

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To

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