

No.C1. 35060/08

Office of the Commissioner  
Commercial Taxes  
Thiruvananthapuram, Dt.01.12.2008.

**CIRCULAR No. 45/08**

Sub- CST Act 1956- Section 5 (3) – Deemed export –Refund under KVAT Act, 2003- Requirement of export documents to prove the claim - certain instructions issued.

- Ref : (1) Representation of Kerala Rubber & Moulded manufactures Association  
(2) Representation of Kerala State Small Scale Industries Asso. Dt.03.09.08  
(3) Govt. Lr.No. 21402/B3/08/TD Dt. 20.10.08  
(4) Endt Lr. No. 8978/M(Fin)/08 Dt. 23.10.08

(1) Subsection (4) of section 5 of the CST Act, postulates mandatory submission of 'H' forms for exemption to prove the penultimate sale/purchase occasioning such export, under section 5(3) of the C.S.T.Act. As per sub-rule (10) of Rule 12 of the CST (Turnover) Rules 1957 read with rule 11 of the CST (Kerala) Rules 1957, H Forms can be pressed into evidence for claim of exemption only by registered dealers in the state. Obviously, If an exporter buys goods for the purpose of complying the terms of anterior contract under section 5(3) of the C.S.T.Act. from an unregistered dealer and exports the very same goods purchase tax contemplated under 6(2)of the K.V.A.T.Act is attracted. If that be so, refund under section 13 is the recourse available. Section 13 of the KVAT Act permits refund of ITC for sale in the course of exports under section 5(3) of the CST Act. Thus, the dealer effecting sales to an exporter under section 5(3) of the CST Act need to produce only the 'H form' from the ultimate Indian exporter to prove his claim of deemed export under section 5(3) of the C.S.T.Act.

(2) Whereas, when the deemed exporter under section 5(3) of the C.S.T.Act claim 'refund of input tax' in respect of such sales (*under section 13 of the KVAT Act*), Rule 47 of the KVAT Rules requires such dealer to produce a copy of the Exporter's copy or Export Promotion copy of the shipping Bill, Air way Bill or similar document evidencing export of the goods, duly certified by the Customs authorities, and a certificate from the Bank to prove receipt of payment from the foreign buyer. The trade has pointed out practical difficulties in obtaining these documents since the actual exporter is not always willing to part with the customs certified copy of the shipping bills, customs documents and bank payment details due to business ethics in export trade.

(3) The issue was examined in detail adverting to the relevant provisions of the CST Act, and it is directed that certification by customs authorities and certificate from the Bank to prove receipt of payment from the foreign buyer need not be insisted in such cases. The requirement by the deemed exporter is complete by furnishing legally permissible 'H-Form' from the Indian exporter, along with the copy of shipping Bill, Air way Bill or similar document attested by the exporter.

This circular should be acknowledged by return.

Sd/-  
COMMISSIONER