

No.C1-33000/12/CT

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Dtd.05 / 10 / 2013

**CIRCULAR No.17 / 2013**

Sub:- CST exemption on certain types of rubber - Implementation of para 439 of Budget Speech, 2013-14 - Instructions issued - reg.

Ref:- (1) S.R.O.No.804/2008 dtd.31st July, 2008  
(2) S.R.O.No.753/2011 dtd.30th November, 2011  
(3) Para 439 of Budget Speech, 2013-14

As per the Explanatory note S.R.O.No.753/2011

*“As per notification issued under G.O.(P) No.159/2008/TD dated 31st July, 2008 and published as S.R.O.No.804/2008 dated 31st July, 2008, inter-state sale of natural rubber coming under Entry 134 of List A of the Third Schedule of the Kerala Value Added Tax Act and tread rubber (HSN 4006.10.00) had been exempted from tax payable under sub-section (1) or sub-section (2) of section 8 of the Central Sales Tax Act subject to the condition that natural rubber has suffered tax under the Kerala Value Added Tax Act, 2003. Sub-section (5) of Section 8 of the Central Sales Tax Act authorizes the State Governments to grant exemption or reduction in the rate of tax under the said Act only in respect of sale to a Registered dealer outside the State subject to the satisfaction of the requirements of sub-section (4) of section 8, namely, furnishing of declaration in Form No.C. By Central Act 16 of 2007, the Central Government has amended sub-section (5) of section 8 of the Central Sales Tax Act, 1956 and took away the power of exemption that may be granted by the State Government in respect of tax payable under sub-section (2) of that section. Hence, such exemption granted by notification published as S.R.O.No.804/2008 becomes ultra vires to the said provision as amended. Hence that has to be rectified. Further, Government intends to exclude all types of rubber latex including the centrifuged latex, which were covered by the notification published as S.R.O.No.804/2008, from the purview of the exemption.”*

By virtue of the sentence underlined above in the explanatory note, it is noticed that some assessing authorities are taking a stand that S.R.O.No.804/2008 is non-est, for the period from 31<sup>st</sup> July, 2008 to 30th November, 2011. This is not a correct interpretation, as it cannot be disputed that the issuance of S.R.O.No.804/2008 was a valid exercise of the powers of State Government under sub section (5) of section 8 of the CST Act and that the SRO is valid in respect of tax payable under sub-section (1) of section 8 (i.e., interstate sale to registered dealers). S.R.O. No.804/2008 was ultra-vires only in respect of tax payable under subsection (2) of section 8 (i.e., interstate sale to unregistered dealers).

Hence, all assessment and penal action issued under the KVAT Act and CST Act on the basis of the above wrong interpretation of the explanatory note of S.R.O.No.753/2011 shall be rectified to the above extent.

With regard to interstate sale to unregistered dealers during the 2008 notification period, the CST liability will be assessed as per law and excess input tax if any under the provisions of KVAT Act will be allowed to be adjusted against CST payable.

Another aspect relating to the S.R.Os.804/2008 and 753/2011 is discussed below:

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-section (1) of Sec.8 is 2%. Once the State Government has notified a lower rate or exemption under sub-section (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 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". Since the interstate sale of these commodities to registered dealers is exempted from tax and as the schedule rates of these commodities under the KVAT Act is 4% / 5%, no refund shall be allowed for the input tax / special rebate, if any availed by the dealer, as per Sec.11 to 13 of KVAT Act.

All assessing authorities are instructed to act accordingly.

Sd/-

COMMISSIONER