

No.C3/6639/13/CT

Office of the Commissioner
Commercial Taxes, Kerala,
9th Floor, Tax Towers,
Killipalam, Karamana P.O,
Thiruvananthapuram
PIN – 695 002.
Dated : 22/10/2013.

CIRCULAR No. 18/2013

Sub: KVAT Act, 2003 – Sale of commodities to an industrial unit situated in a Special Economic Zone outside the State of Kerala and within the State of Kerala and the eligibility to set off the Input tax paid and eligibility for refunds – Certain instructions issued – Reg.

Read: 1.Clarification Order No. C3- 31297/07/CT dtd. 15/9/2007.
2.Clarification Order No. C3/6639/13/CT dtd. 30/8/2013.

The Department vide Order read as 1st paper above had clarified that Input Tax Credit paid by a dealer in respect of goods which are sold to units in Special Economic Zone U/s 6(7)(b) are entitled either for refund U/s. 13(2) or set off U/s. 13(3) of the Kerala Value Added Tax Act, 2003.

But as per the order read as 2nd paper above, the above position was re-examined in the context of the provisions of the Constitution of India, the Central Sales Tax Act, 1956, the Special Economic Zone Act, 2005 and the Kerala Value Added Tax Act, 2003. As per the order read as 2nd paper above it was held that there is no inconsistency in the definition of 'export' in Special Economic Zone Act and Central Sales Tax Act. There was no inconsistency, since the Special Economic Zone Act was enacted for a different purpose i.e., to provide for establishment, development and management of SEZ 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 in the domain of Central Sales Tax Act and the taxation of sales within the State is in the domain of State Legislature. It was also held that the word 'export' as defined in Special Economic Zone Act cannot be imported to interpret 'export' as in the Central Sales Tax Act. It was also clarified that:

i. 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 Section 11(3) of the Kerala Value Added Tax Act. With regard to rubber specifically, the provisions of S.R.O. No. 753/2011 will be applicable for interstate sales.

ii. exemptions / concessions to SEZ situated within the State will be governed solely by the provisions in sub-section (7) of section 6 of the Kerala Value Added Tax Act and sale to SEZ will not be deemed export by virtue of interpretations of 'export' in the Special Economic Zone Act.

The clarification order read as 1st paper above was also modified to the above extent.

In view of the above factual position, it is hereby directed that no such refunds, as granted previously on the basis of Order No. C3-31297/07/CT dated 15/9/2007, shall anymore be granted and all the refunds granted on the basis of the said order till date, shall be recouped. It is also directed that the sale of commodities to an industrial unit situated in a Special Economic Zone located outside the State or within the State, as the case may be, shall be governed by the statutory position clarified in the Order No. C3/6639/13/CT dated 30/8/2013.

Sd/-
COMMISSIONER

To,
All Concerned.
File / SF

// By order //


Assistant Commissioner - II