

No.C1.14593/05/CT

Office of the Commissioner
Commercial Taxes
Thiruvananthapuram
Dated. 23.04.05

CIRCULAR NO.7/05/CT

Sub:- Kerala Value Added Tax Act, 2003-Turnover of rubber- cess on rubber- whether forms part of the turnover.

A question has been raised whether cess payable under the Rubber Act is to be included in the turnover of a rubber dealer, who sells rubber to a manufacturer of rubber products, and whether Value Added Tax has to be collected on the cess component of the turnover.

2. The Hon'ble Supreme Court of India had occasion to consider the issue with reference to the provisions of the KGST Act, 1963 in State of Kerala Vs M.R.F Ltd (1998) 6 KTR 118(S.C) After examining the provisions of the Rubber Act, 1947 and the rules made there under, the court held.

“11.By reason of section 12(1) of the Rubber Act a cess at the rate prescribed is statutorily levied on the rubber so produced and the liability to pay the said amount of cess gets attached to the rubber so produced. If the rules do not provide for the excise duty to be paid by the producer then whoever purchases the said rubber would be purchasing goods to which is attached the liability of payment of duty. In other words, the duty element would be inherent in the price, which is paid for the purchase of the said goods. The duty of excise is one which is directly relatable to the production or manufacture of goods but can be collected at a later stage is no longer open to doubt in view of several decisions of this Court some of which- are R.C Jall Vs Union of India (AIR 1962 SC 1281) Guruswamy and Co Vs State of Mysore (1967) 1 SCR 548, Jullundur Rubber Goods Manufactures Association Vs Unions of India (AIR 1970 SC 1589, A.B Abdul Kadir Vs State of Kerala (1976) 2 SCR 690 and McDowell and Company Ltd Vs Commercial Tax Officer (1985) 59 STC 277 SC.

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17. It is no doubt true that Section 12(1) does not specifically state that the taxable person is a producer or the grower of the rubber. It is, however, not possible to accept the contention that the Rules alone are to be looked at in order to fix the liability of payment of cess. Sections 12(1)

and 12(2) have to be read together. Excise duty being a levy on the manufacture or production of goods could ordinarily have been collected at that stage itself. This was, in fact, the position prior to the amendment of section 12(2) in 1960. Section 12(2) after amendment makes it very clear that the levy of cess is under sub-section (1) of section 12 and not under sub-section (2). It is only with regard to the collection of the cess that an option is given to collect the same either from the producer or the manufacturer. A charge under a taxing statute can only be under the Act and not under the Rules. The rules normally provide for the procedure to be followed for the realization of the statutory dues. It is in this context that sub-section (2) enables the framing of the rules whereby the duty instead of being realized from the producer is realized at a latter stage, namely, from the manufacture. Once the liability of payment of cess has got attached to the rubber when manufactured and that duty is ultimately paid by the end user, namely, the manufacturer, it would be implicit that the element of the cess payable would be one of the factors in determining the price payable in respect thereof.

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20. In our opinion, therefore the incidence of duty is directly relatable to the production of rubber. The character of levy is not altered merely because the payment of duty is deferred till the purchase of the rubber by the manufacturer. The character of levy is on the production of rubber and the duty paid should, therefore, be deemed to be part of the price that the producer had paid for the goods purchased. Neither a provision for deferred payment nor the liability cast on the manufacturer of rubber goods for payment of the duty to facilitate easy collection, can alter the duty as being one on the production of rubber as provided by section 12(1) of the rubber Act and such duty even though paid later, will be a part of the goods purchased and would, therefore, form part of the producers turnover”.

2. Under the Kerala Value Added Tax Act also the definition of “Turnover” is substantially the same as under the Kerala General Sales Tax Act. So the cess payable will form part of the turnover of rubber right from the stage where the planter sells rubber. So VAT will have to be charged on the “cess” component also.

3. All officers are directed to note the above position and inform the dealers also accordingly and ensure that VAT is collected on the turnover of rubber after adding cess also in the turnover.

Commissioner

