

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. C. Lalappan.

*Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. T.K. Ziavudeen.

*Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. V.J. Gopakumar

*Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub : KVAT Act, 2003 – Clarification U/s 94 – Joint Venture Company,
bunker sale and tax liability – Orders issued.

Read : Application from M/s. Bharat Petroleum Corporation Ltd., Southern
Region, Chennai dtd. 2/4/2014.

ORDER No.C3/13454/14/CT DATED 28/4/2015.

1. M/s. Bharat Petroleum Corporation Ltd., Southern Region, Chennai has preferred an application U/s 94 of the Kerala Value Added Act, 2003 seeking clarification on the tax liability on bunker sale to foreign going vessels through a joint venture company formed between M/s. Bharat Petroleum Corporation Ltd., and M/s. Matrix Bharat Pte.

2. The applicant has informed that one of their international bunkering agents, M/s. Matrix Bharat Pte. has proposed taking out registration under the Kerala Value Added Tax Act. As per the proposal, M/s. Matrix Bharat Pte. shall get registered in Kerala and purchase product for bunkering supplies from BPCL and in turn shall sell it to foreign going vessels for international bunkering.

3. The applicant has referred sixth proviso to Section 6(1) and Rule 12C(4). The applicant would contend that M/s. Matrix Bharat Pte. is proposing to purchase products from them at the concessional VAT rate of .5%, store it in their Custom Bonded Warehouses and subsequently sell it to foreign going vessels. M/s. Matrix Bharat Pte. is proposing to charge .5% VAT on the ultimate sale made by them to foreign going vessels and will raise separate vatable invoices.

4. The applicant has requested to clarify the following:

- i. Whether sale of bunkering fuel by BPCL to M/s. Matrix Bharat Pte. is eligible for concessional rate of .5% ? Will they be treated as agents as per the Act.
- ii. Will Matrix be eligible to take credit of VAT paid on purchases?
- iii. Documents to be collected by BPCL in the first scenario stated above.
- iv. The eligibility for concessional rate with respect to products under the VAT and KGST Acts i.e. furnace oil, lubricants, high flash diesel oil and diesel.

5. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

6. The applicant has produced copy of the Joint Venture Company Agreement between themselves and M/s. Matrix Marine Fuels LP, before this Authority. The agreement has been perused, and the points (i) to (iv) stated supra are clarified as follows:

- (i). As per the terms of the Joint Venture Company Agreement between M/s. Bharat Petroleum Corporation Ltd. and M/s. Matrix Marine Fuels LP, it can safely be concluded that M/s. Matrix Marine Fuels LP does not acquire the character of an agent and hence the sale of bunkering fuel by the applicant to M/s. Matrix Bharat Pte. would not be eligible for concessional rate.
- (ii). If M/s. Matrix Marine Fuels LP, takes out registration under the Kerala Value Added Tax Act, 2003 and purchases furnace oil from M/s. Bharat Petroleum Corporation Ltd. in Form No. 8 Bill, and then effect sale within the customs frontier, they will be eligible for Input Tax Credit.
- (iii). The issue raised do not fall within the ambit of Section 94 of the Kerala Value Added Tax Act, 2003 and hence is hereby declined.
- (iv). Concessional rate of .5% would be applicable to the sale of fuel and lubricants to foreign-going vessels other than fishing vessels, for the supply of bunker under sixth proviso to sub-section (1) of section 6 of the Kerala Value Added Tax Act, 2003 subject to the conditions laid down in S.R.O. No. 635/2012. The rate of tax of the commodities falling under the Kerala General Sales Tax Act, 1963 viz. High-Flash High Speed Diesel Oil and Diesel is not clarifiable, as the issue raised will not come within the ambit of Section 94 of the Kerala Value Added Tax Act, 2003 and hence is hereby declined.

C. Lalappan
Joint Commissioner (A&I)

T.K. Ziaudeen
Joint Commissioner (General)

V.J.Gopakumar
Deputy Commissioner (General)

To,

Sri. D. Hemanth Kumar,
Assistant Manager, Finance – SS, South,
M/s. Bharat Petroleum Corporation Ltd.,
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