22. DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/S.94 OF THE KVAT ACT, 2003.

Members Present are:

1. V. Murukesh Kumar, Dy. Commissioner (General), O/o.CCT, Tvpm.
2. R. Rajasekharan Nair, Dy. Commissioner (A & I), O/o.CCT, Tvpm.
3. K.M. Althaf, Dy. Commissioner (Int.), O/o. DC(Int), Tvpm.

Sub:- KVAT Act, 2003 – Clarification U/s.94 – Eligibility of Input Tax Credit on Stock Transfer of Finished Goods for Export – Orders Issued – Reg.

Read:- Application from M/s.MRF Ltd., Kottayam dtd.03-06-2008

ORDER No.C3/22276/08/CT dated 4/11/2009.

(1) M/s. MRF Ltd., Kottayam has filed an application under Sec.94 of the KVAT Act, 2003 seeking clarification on the eligibility of Input Tax Credit on stock transfer of finished goods for export.

(2) The applicant having Registered Office at Chennai and manufacturing unit at Kottayam is registered under KVAT Act. The applicant procures raw material from dealers registered under the Act and manufacture tyres / tubes / tread rubber in the unit at Kottayam.

(3) A part of the goods manufactured in Kottayam is dispatched to the applicant's centralized godown in Puzhal, Tamil Nadu for export. The centralized godown (called export godown), is exclusively for effecting export sales of goods manufactured in the factories in different States including the Kottayam factory.

(4) The applicant contends that in some cases the export order is for tyres, tubes and flaps together. The goods dispatched from all the factories are exported as such and the goods do not undergo any manufacturing process at the centralized export godown in Tamil Nadu. The centralized export godown is only a transit point.

(5) The applicant has argued that the products manufactured for export have a unique product code and therefore, even when manufactured, the products are pre-determined for export. The movement of goods to the godown is monitored by the Central Excise. As goods meant for export, the tyres and tubes are dispatched to the centralized godown without payment or excise duty with an obligation to submit proof of export. The applicant has also furnished a report about the export documentation procedure under Central Excise.

(6) The applicant has referred the Hon'ble Supreme Court's judgment reported in (2007) 8 VST 466 (SC), State of Haryana and Ors. Vs. Nipha Exports Pvt. Ltd. to support his argument. The applicant has also referred the judgment of the Hon'ble High Court of Punjab & Haryana in the Writ Petition of Patel Cotton Company Ltd. Vs. State of Haryana and Another (2007) 10 VST 30 (P&H).

(7) The applicant contends that the dispatch of tyres and tubes to the export godown in Tamil Nadu is in the course of export under Sec.5(1) of the CST Act, 1956 covered under Sec.13(1) of KVAT Act, 2003.

(8) The applicant has requested clarification on the following points:

(a) Is the dispatch of manufactured goods to the export godown in Tamil Nadu for export out of India as export taxable at Zero rate u/s.13(1) of KVAT Act with eligibility of Input Tax Credit in full.

(b) Whether the movement of goods could be treated as a stock transfer eligible for Input Tax Credit only of VAT paid in excess of 4% as per section 13(2) of the KVAT Act.

(9) The applicant was heard and the contentions raised were examined.

(10) The word "export" does not mean merely "taking out of the country" but that the goods must be sent to a destination at which they could be said to be imported. Concept of export in Article 286(1)(b) of the Constitution and the CST Act and Kerala Value Added Tax Act postulates the existence of two termini between which they are intended to be transported. It is the entrance of the articles into the export stream that marks the start of the process of exportation. Then there is certainty that the goods are headed for their foreign destination and will not be diverted to domestic use. Nothing less will suffice.

(11) The packages for export are finalized at Puzhal godown in Tamil Nadu where goods from various States are pooled. As per Central Excise Rules, though the applicant can setup an export godown, it does not mean that the goods in the godown be necessarily be exported. They can be diverted to domestic trade market also after fulfilling the formalities. It is contended by the applicant that the godown at Puzhal, Tamilnadu is maintained for effecting export sales of goods manufactured in their factories in different States including the factory at Kottayam in Kerala. The transport document from the applicant's factory at Kottayam to their godown at Tamil Nadu shows the transport as Stock Transfer destined to their Tamil Nadu godown. The foreign destinations of these products are finalized only at the Tamil Nadu godown. This fact can be deduced from the applicant's contention that "in some cases the export order is for tyres, tubes and flaps together". The facts suggest that the goods meant for export were received in the applicant's export godown at Tamil Nadu as unascertained goods, and thereafter, goods from different states and factories were pooled, repacked and destinations were assigned. Thus the goods are made specific and ascertainable, in the applicant's godown within the territory of the State of Tamil Nadu. Thus, the goods join the export stream only from Puzhal godown. So, the movement of goods from Vadavathur, Kerala to Puzhal, Tamil Nadu cannot be in the course of export, and is an interstate stock transfer.

(12) The judgment cited by the applicant in State of Haryana Vs. Nipha Exports Pvt. Ltd. (2007) 8 VST 466 SC, is not relevant in deciding the facts in issue, since it is found that the export sale commenced from their godown in Tamil Nadu.

(13) The issues raised above are clarified accordingly.

Dy. Commissioner (General) O/o. CCT, Tvpm.	Dy. Commissioner (A & I) O/o. CCT, Tvpm.	Dy. Commissioner (Int.) O/o. D.C (Int.), Tvpm.