

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. T.K. Ziaudeen.
*Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. Dr. A. Bijikumari Amma.
*Joint Commissioner (A & I),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. N. Thulaseedharan Pillai.
*Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Rate of tax for hydrogen, carbon monoxide, mixture of carbon monoxide and hydrogen (synthesis gas), steam, nitrogen, oxygen, naphtha & natural gas - Orders issued.

Read :- Application dtd. 11-02-2013 from M/s. Prodair Air Products India Private Ltd., Pune.

ORDER No.C3/5133/13/CT DATED 03/07/2017

1. M/s. Prodair Air Products India Private Ltd., Pune has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to Rate of tax for hydrogen, carbon monoxide, mixture of carbon monoxide and hydrogen (synthesis gas), steam, nitrogen, oxygen, naphtha & natural gas and also whether company will be entitled to a refund of the excess VAT paid on the inputs.

2. The applicant has submitted that the company is evaluating a green field investment in Kochi for an industrial gas generation facility that would primarily supply high quality, critical industrial gases to large customers in Kochi. The applicant has also submitted that main raw materials used for the manufacturing of the industrial gases are Natural gas, and Naphtha. The raw materials are processed through extensive technical process to produce Hydrogen gas, Nitrogen gas, Oxygen gas, Gaseous mixture of hydrogen and carbon monoxide, and steam.

3. The applicant would contend that sub-section (3) & (5) of section 11 provide for the restrictions in availing input tax credit. Reading the above sub-sections, the Act provides for limiting the input tax only when the sale price is

lesser than the purchase price (2nd proviso) or when the goods are sent to outside the State through stock transfer (3rd proviso). Therefore reading the various provisions of the Act, there is no provision to restrict the input tax paid on the purchase of inputs on the ground that the rate for the output is less than the rate of tax for the inputs. The applicant would contend that the dealer is entitled for refund of excess input tax paid in the above factual situation.

4. The applicant has requested to clarify

a. rate of tax for the individual products:- Hydrogen, carbon monoxide, mixture of carbon monoxide and Hydrogen (synthesis gas), steam, Nitrogen, Oxygen, Naphtha, Natural Gas;

b. whether Company will be entitled to a refund of the excess VAT paid on the inputs.

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

6. The clarification sought regarding refund of the excess VAT paid on the inputs is purely a fact related one and hence it does not come within the purview of sec. 94(1) of the Act.

7. Regarding rate of tax of the commodities, it is hereby clarified that the commodities hydrogen, nitrogen, oxygen and naphtha would be taxable @5% by virtue of entries 78(1), 78(4), 78(5)(b) and 92A of the List A to the Third schedule respectively. There is no specific entry for the commodities such as carbon monoxide, mixture of carbon monoxide and hydrogen (synthesis gas), steam and natural gas. As such, carbon monoxide, mixture of carbon monoxide and hydrogen (synthesis gas), steam and natural gas would be taxable at the rate of 14.5% by virtue of entry 103 of SRO No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen
Joint Commissioner (Law)
(General)
O/o CCT

Dr. A. Bijikumari Amma
Joint Commissioner (A&I)
O/o CCT

N. Thulaseedharan Pillai
Joint Commissioner
O/o CCT

To

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