

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, KERALA
THIRUVANANTHAPURAM.

PRESENT : RAJESH KUMAR SINGH, I.A.S.

Sub: KGST Act, 1963 - Clarification U/s 59A - Whether Tax liability on the sale of DEPB is inclusive of entitlement and premium- Orders Issued.

Read: Application from M/s. Toja Tyre & Treads Pvt. Ltd., Kalady dated 28/7/2011.

ORDER No.C3/26174/11/CT DATED 16/9/2011.

1). M/s. Toja Tyre & Treads Pvt. Ltd., Kalady has preferred an application U/s 59A of the Kerala General Sales Tax Act, 1963, seeking clarification on whether in respect of the sale of DEPB, tax is to be paid under the Act on the entire value of the DEPB i.e. the entitlement authorized under the DEPB plus premium or on the premium alone realized on transfer of the DEPB.

2). The applicant is a Private Limited Company engaged in the manufacture of tyre and tread rubber. The products are sold locally, interstate and also in the course of export outside the territory of India. Once exports are done, under the Foreign Trade Policy, the exporter will be entitled to import goods of a prescribed value. The entitlement for this is given in the form of Duty Entitlement Pass Book (DEPB). The amount shown in the pass book is the entitlement corresponding to specific exports. As this is part of the foreign trade, the amount shown in the pass book, which represents the Duty Entitlement to which the exporter is certified by the Director General of Foreign Trade to be eligible, does not represent any sale of goods either within the state or interstate and will be outside the purview of the Kerala General Sales Tax Act or the Central Sales Tax Act.

3). The applicant placing reliance on the judgment in Vikas Sales Corporation and Another Vs. Commissioner of Commercial Taxes and Another (1996) 4 KTR 300 (SC) contends that the Apex Court held that the amount shown in the license as such is not taxable but only the premium received by the transferor of the REP license is liable to Sales Tax. The applicant has requested to clarify the same.

4). The authorised representative of the applicant was heard and the contentions raised were examined.

5). In an issue similar to the instant one, the Hon'ble Supreme Court of India in its judgment in Vikas Sales Corporation and Another Vs. Commissioner of Commercial Taxes and Another [(1996) 4 KTR 300 (SC)], had held that R.E.P. licences are goods and the premium or

price received by the transferor thereof is liable to Sales Tax there under. Hence, in the instant case, the entire value of the Duty Entitlement Pass Book, i.e. the entitlement authorized under the Duty Entitlement Pass Book plus the premium realized on sale of Duty Entitlement Pass Book would be taxable under Kerala General Sales Tax Act, 1963.

The issue raised above is clarified accordingly.

COMMISSIONER