

ORDER OF CLARIFICATION U/S 56(3) OF HVAT ACT, 2003 ON THE APPLICATION OF M/S UNITED RICE LAND PVT. LTD., KURUKSHETRA.

This is an order of clarification u/s 56(3) of the Haryana Value Added Tax Act, 2003 (VAT Act) on the application of M/s United Rice Land Pvt. Ltd., Kurukshetra seeking clarification on the issue of tax liability on opening stock of paddy (as on 1.4.2003) when sold in the course of export out of the territory of India.

The circumstances envisaged by the applicant company and the points on which the clarification has been sought are as follows.

Transaction Description:

Dealer 'A' purchased paddy under Haryana General Sales Tax Act, 1973 (hereinafter referred as 'HGST'). The day the Haryana Value Added Tax Act, 2003 (hereinafter referred as 'VAT Act') came into force he had the stocks of the same paddy (HGST Stock). After 1st of April 2003, the dealer A sells part of the HGST stock to dealer 'B' in the course of export out of the territory of India as defined by section 5(3) and 15 ca of the Central Sales Tax Act, 1956 (hereinafter referred as 'CST Act'). The dealer 'B' manufactures rice out of the said paddy and sells it to a foreign buyer out of the customs frontiers of India and provides VATD2 to the dealer 'A' as prescribed under the VAT Act.

Related clarifications:

1. Would there be any tax liability to dealer 'A'?
2. If there is any tax liability to dealer A, then under which provisions?
3. Would there be any tax liability to dealer 'B'?
4. If there is any tax liability to dealer B, then under which provisions?

The issues were examined in the light of the provisions of Section 27(1)(b)(B) of the Haryana General Sales Tax Act, 1973 (since repealed), Sections 3(3) and 6 of VAT Act and Rule 25(e) of Haryana Value Added Tax Rules, 2003 (VAT Rules).

The goods (paddy) which were in stock on 1.4.2003 when VAT Act came into force, were purchased during the year 2002-03. The opening stock of paddy shall be

treated as purchases of the subsequent year (2003-04) in view of Section 27(1)(b)(B) of the HGST Act, 1973 as on 31.3.2004 the sales tax Act was in force. As per section 27(1)(b)(B) the deduction of closing stock in the State at the close of the year was admissible while determining taxable turnover of the dealer in respect of goods specified in Schedule C or Schedule D subject to the condition that purchases of such goods shall be deemed to be the purchase of the dealer during the year following.

The relevant provisions are as under:-

Section 27. Taxable turnover.- (1) In this Act, the expression, “taxable turnover” means that part of a dealer’s gross turnover during any period which remains after deducting therefrom his turnover during that period

(a) -----

(b) on account of purchase of goods which are specified in Schedule C or Schedule D and are liable to tax at the stage of last purchase as specified in Schedule C or Schedule D or the first proviso to Section 17 –

(A) -----

(B) which remain in his stock in the State at the close of the year:

Provided that purchase of such goods, shall be deemed to be the purchase of the dealer during the year following;

Section 3(3) of the VAT Act provides as follows:-

(3) If a dealer liable to pay tax under sub-section (1) or sub-section (2) purchases any taxable goods in the State from any source in the circumstances that no tax is levied or paid under this Act on their sale to him and he either exports them out of State or uses or disposes them of in the circumstances in which no tax is payable under this Act or the Central Act by him to the State on them or the goods manufactured therefrom, then, he shall, subject to the provisions of sub-section (4), be liable to pay tax on the purchase thereof:

Provided that where such goods (except those specified in Schedule F) or the goods manufactured therefrom are sold in the course of export of the goods out of the territory of India, no tax shall be levied on their purchase:

Provided further that where the goods purchased are used or disposed of partly in the circumstances mentioned in the foregoing provisions of this subsection and partly otherwise, the tax leviable on such goods shall be computed pro rata.

As per section 6 of VAT Act, for determining taxable turnover the deduction on account of sale of goods in the course of export of goods out of the territory of India is admissible. However, such a deduction shall be admissible on furnishing to the Assessing Authority such documents or proof as may be prescribed. These documents and proofs have been prescribed in rule 25(e) of the VAT Rules. The deduction shall be admissible when the dealer produces sale invoice, declaration in form VATD2 and documents showing export of the goods out of the territory of India. Similar is the position where the outsider purchases the paddy against H form.

The answer to the queries of the present applicant has to be found in view of the above legal position.

1. “Dealer A would be liable to pay purchase tax under Sections 3(3) of the VAT Act as the goods were purchased without payment of tax and no tax is leviable on the sale of these goods under the VAT Act or the Central Sales Tax Act in the given situation. No concession is permissible in case of paddy being the item specified in Schedule F as per the proviso to section 3(3).
2. The dealer B (miller-cum-exporter) purchases paddy in the state of Haryana. The rice procured from such paddy is sold in the course of export u/s 5(1) of the Central Act under the agreement to comply with which the paddy was purchased. The declaration in form VATD2 alongwith the documents referred to in the declaration is issued to the seller in support of the claim of purchase of paddy for the compliance of the agreement of export of rice.

In view of provisions of Section 15 ca of Central Act, where the rice procured out of paddy is exported out of the country, the paddy and rice shall be treated as single commodity for the purpose of Section 5(3) of the Central Act. As the purchase of paddy is for export of rice which is exported out of the

country in compliance of the same purchase order, rice and paddy shall be treated to be single commodity as the transaction of purchase of paddy and export of rice shall be in the course of export under section 5(3) of the Central Act. Further as the sale of paddy by the dealer to the exporter of rice is the last sale preceding the export of rice, the sale of paddy shall be deemed to be in the course of export of such goods out of the country and hence no levy of tax. The dealer B (exporter-cum-miller) shall not be liable to pay tax on the purchase of paddy if the purchase of paddy, its milling and sale of rice procured therefrom are in the circumstances narrated above.

This clarification shall be uploaded on the official website.

(L.S.M.Salins)
Financial Commissioner & Principal Secretary to
Government Haryana, Excise and Taxation Department.

Dated: 13.08.2004