

**ORDER OF CLARIFICATION MADE BY SHRI RAMENDRA JAKHU,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003**

Queriest : Gurgaon Industrial Association GIA Marg, Sector – 14, Gurgaon.

Gurgaon Industrial Association, the queriest, has sought clarification under section 56(3) of the Haryana VAT Act in regard to computation of tax concession admissible to a unit granted entitlement certificate under rule 28(c) of the Haryana General Sales Tax Rules, 1975 under the Haryana VAT Act. Vide section 61 of the Haryana VAT Act the relevant provisions relating to tax concessions to Industrial Units viz rule 28(a), 28(b) & 28(c) were saved while repealing the HGST Act, 1973. The case cited while seeking clarification under section 56(3) is that of M/s Nipa International Pvt. Ltd., Gurgaon. The unit was granted eligibility certificate for Rs. 8787865/- on the basis of Fixed Capital Investment of the unit in land building, plant & machinery and moulds etc. Eligibility certificate was issued as a diversification unit and entitlement certificate for Rs. 8787865/- for the period from 12.06.2001 to 11.06.2006 has been issued subject to provisions of rule 28(c) of the HGST Rules. As per table II of rule 28(c) extent of tax concession in case of large, medium & small scale units is hundred percent of Additional investment for a period of 5 years with scale of tax concession from 1st to 5th year being 50%. Plea of the applicant is that the unit Nipa International Pvt. Ltd. was granted a tax concession of Rs. 87.87 lac and hence he was entitled for tax benefit of that much amount spread over a period of 5 years. However, the Assessing Authority while framing assessment of the year 2002-03 has computed a tax benefit of Rs. 5213956/- against actual tax concession of Rs. 2606976/- availed of by the unit. Further, the Assessing Authority has carried forward a tax benefit of Rs. 3483971/- for the year 2000-01 against actual tax benefit of Rs. 1741958/- resulting in total tax benefit of Rs. 8697927/- against actual benefit of Rs. 4346963/- Contention of the applicant is that their tax concession has been reduced from 87.87 lac to 43.93 lac resulting in benefit of only 50% of the actual tax benefit granted vide the entitlement certificate. Plea of the applicant is that the Assessing Authority was not justified in his action and hence a clarification needs to be

issued keeping in view the relevant provisions of rule 28(c) of the HGST Rules (since repealed). The issue has been examined. As per explanation I to Rule 28(c) 5(a) “for the purpose of calculation of benefits availed of under the rule, tax payable including the component of tax to be converted into subsidy shall be taken into account”. Meaning thereby that while computing the benefit of tax availed the element of subsidy is to be taken into account and in case of scale of tax concession being 50% the tax benefit availed shall be the double of the tax payable. The explanation has sound basis and rationale. Basis for quantum of tax benefit under rule 28(a), (b) & (c) of the HGST Rules has been the Fix Capital Investment and in case of full tax benefit a tax benefit equal to the Fix Capital Investment viz investment in land, building & machinery is to be allowed. The total benefit availed can't exceed the total Fix Capital Investment if so provided. However, where scale of tax concession is 50% it naturally implies that the actual tax concession shall be 50% of the Fixed Capital Investment, though the extent of tax concession is 100% of Fixed Capital Investment. If the plea of the applicant is accepted, the same will amount to full concession in case of diversification unit under rule 28(c) as well which is not the intention of the department. In view of explanation (1) of rule 28(c)(5a) reproduced above the Assessing Authority has rightly computed the tax benefit of Rs. 8697927/- against actual benefit of Rs. 4348963/- i.e. double of the tax benefit availed. Thus, under rule 28(c) of the HGST Rules tax benefit availed is to be calculated as per the provisions of explanation (1) of rule 28(c)(5a) cited above”. The matter is clarified accordingly.

Place : Chandigarh
Dated : 24.01.2008

(RAMENDRA JAKHU)
Financial Commissioner & Principal Secretary
to Govt. of Haryana, Excise and Taxation Department.

Issued vide letter No. 869-871/ST-I, Dated 01-02-08