

**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**

**Querist: M/s Elite Plywood Industries Pvt. Ltd., Saharanpur Road,
Yamuna Nagar and M/s United Timber Works, Saharanpur Road,
Yamuna Nagar.**

The querist M/s Elite Plywood Industries Pvt. Ltd., Saharanpur Road, Yamuna Nagar, holding TIN No. 06511608953 and M/s United Timber Works, Saharanpur Road, Yamuna Nagar holding TIN No. 06231602123 have sought clarification under section 56(3) of the Haryana VAT Act, 2003. Similar and identical issue in both these cases is regarding **computation of the amount of benefit of reduction in the lump-sum tax liability towards the sales of plywood in the course of export out of the territory of India.** Since the clarification sought in both the cases is identical, the same are being disposed of through a single order. Both the applicant units are engaged in the business of manufacture and sale of ply-board and ply-wood, are registered under the Haryana VAT Act, 2003, and the goods manufactured by these units are sold in course of inter-state trade or commerce as also in the course of export out of the territory of India. Both the units have exercised option for lump-sum payment of tax under the Haryana VAT Rules, 2003. The applicants have explained that upon receipt of orders from exporters in the recent past, they have been selling plywood within the meaning of sub-section (3) of section 5 of the CST Act, 1956 on which no CST is payable. However, the payment of lump-sum composition being made by the units is resulting in imposition of tax on sales that take place in the course of export. The applicants have further explained that according to section 4 of the Haryana Value Added Tax Act, 2003, notwithstanding anything contained in the Act, a tax on the sale or purchase of goods shall not be imposed under the Act, -

- (a) Where such sale or purchase takes place outside the state;
- (b) Where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India; or
- (c) Where such sale or purchase of goods takes place in the course of inter-state trade or commerce.

Further, at the time of personal hearing given to the applicant firms, attention towards article 286 and article 265 of the Constitution of India has been drawn. Provision of section 4 of the Haryana VAT Act, reproduced above, are in consonance with article 286 of the Constitution that debars levy of tax on sale or purchase which take

place outside the state or in the course of import of the goods into, or export of the goods out of, the territory of India. Further, article 265 debars any levy or collection of tax except by authority of law. Plea of the applicants is that provisions of section 4 of the Haryana VAT Act have overriding effect over section 9 of the Haryana VAT Act and Rule 51 of the Haryana VAT Rules and accordingly levy of tax on sales of plywood and a ply-board in course of export under section 5(3) of the CST Act, 1956 is not attracted.

The issue has been examined. Section 9(1) of the Haryana VAT Act **provides for payment of lump sum in lieu of tax.** Section 9(1) is reproduced as under :-

The State Government may, in the public interest and subject to such conditions as it may deem fit, accept from any class of dealers, in lieu of tax payable under this Act, for any period, by way of composition, a lump sum linked with production capacity or some other suitable measure of extent of business, or calculated at a flat rate of gross receipts of business or gross turnover of purchase or of sale or similar other measure, with or without any deduction therefrom, to be determined by the State Government, and such lump-sum shall be paid at such intervals and in such manner, as may be prescribed, and the State Government may, for the purpose of this Act in respect of such class of dealers, prescribe simplified system of registration, maintenance of accounts and filing of returns which shall remain in force during the period of such composition.

Further, sub-rule (4) of rule 51 provides that a ply-board manufacturer in whose case composition under this rule is made and is in force **shall file the returns under the Central Act as if no composition is in force and shall pay tax due according to such returns** after adjusting the amount of lump sum payable for the return period at the rate(s) given in sub-rule (1).

From plain reading of section 9(1) of the Act reproduced above, it is clear that lump-sum composition is not mandatory and the dealers have the option to enter into it. Further, it is clear from the relevant provisions that **lump-sum is linked with production capacity or some other suitable measure of extent of business and has nothing to do with the nature of sales to be conducted by such lump sum dealer.**

Further, sub-rule (4) of Haryana VAT Rules makes it clear that ply-board manufacturer in whose case composition under this rule

is made and is in force shall file the returns under the CST Act as if no composition is in force and shall pay tax due according to such returns.

Thus, composition under section 9 of the Haryana VAT Act is all together on a different footing, is entered into on mutual convenience of the department and the dealer, has no element of arbitrariness, and results in certain accompanying facilities and benefits to the assesseees. At the same time, **the provisions make it amply clear that lump sum composition is in lieu of tax payable under this Act without any bearing on tax payable under the Central Act.** The provisions of lump sum composition are neither in violation of section 4 of the Haryana VAT Act, nor in violation of article 265 and article 286 of the Constitution of India. **It is a symbiotic relation between the dealer and the department,** a composition based on production capacity or extent of business with or without any deduction.

Thus, where a dealer enters into lump-sum composition with the department, the provisions of lump-sum composition and not the normal scheme of taxation under the Haryana VAT Act shall prevail. **Accordingly, there cannot be any reduction or refund of tax out of the lump sum received by the department against lump-sum composition, viz-a-viz. the export sales made by such lump sum dealer.** The provisions are neither arbitrary nor against the spirit of law. Accordingly, there can be no ground for benefit of reduction in the lump sum tax liability toward the sales of plywood in course of export of the territory of India as argued and explained by the applicant firm. Matter is clarified accordingly.

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

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