

PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND ADVANCE RULINGS UNDER SECTION 60 OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 READ WITH RULES 163 TO 165 OF THE KARNATAKA VALUE ADDED TAX RULES, 2005

PRESENT :

- (1) M.D.Jain
Additional Commissioner of Commercial Taxes (Head Quarters-I), Bangalore and Chairman.
- (2) H.D.Arunkumar,
Additional Commissioner of Commercial Taxes (Policy & Law), Bangalore and Member.
- (3) R.Jagadeesh Prasad,
Additional Commissioner of Commercial Taxes (Goods and Service Tax), Bangalore and Member.

NAME AND ADDRESS OF THE APPLICANT : SRI N.SATHYAN,
Partner, SRI VINAYAKA AGENCIES,
Indane Distributors, 686, 30th Cross,
Tilak Nagar, Bangalore-560 041
Bangalore.

TIN : 29950136017

JURISDICTIONAL ASSESSING AUTHORITY : ACCT, LVO-90, Bangalore

REPRESENTED BY : Sri M.A.Maniyar,
Authorized representative

ORDER NO.AR.CLR.CR.15/2013-14, DATED 12.9.2013:

Sri N.Sathyan, Partner, Sri Vinayaka Agencies, Bangalore, a dealer registered under the KVAT Act, 2003 (hereinafter referred to as the 'Act') with TIN-29950136017 is engaged in the business of sale of domestic and non-domestic LPG to local customers by purchasing the same from M/s.Indian Oil Corporation Limited, Bangalore (M/s.IOCL). The applicant has sought clarification as to whether tax is leviable on the payments received from oil companies towards cost of transportation of LPG cylinders, as constituting consideration for transfer of right to

use the trucks to the oil companies, as per the definition of 'deemed sales' under Section 2(29) (d) of the Act.

2. The facts relevant to the clarification sought by the applicant and submissions made by the applicant are as under:

- (1) The applicant has entered into LPG Cylinder Road Transport Contract Agreement with IOCL and other oil companies after being successful bidder, for transport (and delivery) of filled and empty cylinders using his own trucks between the location of the LPG distributors and oil companies and that these transport contracts are separate from the contracts for sale of LPG cylinder (Copies of the relevant contracts and agreements are furnished).
- (2) The trucks are operated by drivers on employment by the applicant by keeping the trucks under his own control and custody at all times.
- (3) Cost of fuel, lubricant and maintenance is fully borne by the applicant.
- (4) Risk in the transportation of filled and empty LPG cylinders is fully covered by the applicant and transit insurance is taken by the applicant at his own cost.
- (5) Payments are made by IOCL to the applicant for number of kilometers run by trucks on round trip basis and not for any duration for which the trucks are delivered in possession of IOCL.

3. It is the understanding of the applicant that the payments made by M/s.IOCL towards transportation of LPG cylinders by trucks are not consideration attributable to transfer of right to use the trucks, constituting deemed sales as per Section 2 (29) (d) of the KVAT Act, 2003 and hence such transaction is not liable to tax. In support of the judgments in the cases of Lakshmi Audio Visual Inc. (124 STC 426), Rashtriya Inspat Nigam Limited (77 STC 182 & 126 STC 114) and a few other cases are furnished. The applicant's authorized representative strongly submitted that the judgment of the Hon'ble Gauhati High Court (22 VST 20) squarely applies to the applicant's case.

