**GOVERNMENT OF TAMIL NADU**
**COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE**
**AUTHORITY FOR CLARIFICATION AND ADVANCE RULING**
**(Under Section 48-A of TNVAT Act, 2006)**

**Present:** 1. **Thiru K. Rajaraman, I.A.S.,**
**Principal Secretary/**
**Commissioner of Commercial Taxes,**

2. **Thiru R. Vayanaperumal, B.Sc.,M.A.,**
**Additional Commissioner (PR)(FAC)**

3. **Thiru. K. Mahalingam, M.Sc.,**
**Additional Commissioner (RP)**

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**A.C.A.A.R 107/ 2013-14** (Acts cell–II/1855/2014) — **Dated 19.03.2014**

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| 1 | Name of the Applicant | : | Tvl. Mona Generator Services (P) Ltd. No.33/28, Rani Anna Nagar, KK Nagar, Chennai – 600 0078. |
| 2. | Registration Certificate No. | : | TIN:33591425376 / CST:1123267 |
| 3. | Name of the Assessment circle | : | Saligramam, Chennai |
| 4. | Date of application | : | 17.01.2014 |
| 5. | Date of receipt of application | : | 17.01.2014 |
| 6. | Clarification sought for | : | Rate of tax for "Diesel Generator Sets" |
| 7. | Date of Personal Hearing | : | 14.02.2014 |
| 8. | Represented by | : | Thiru. C. Seshadri Nadan, Chartered Accountant and Authorized Representative |

Tvl. Mona Generator Services (P) Limited, @ No.33/28, Rani Anna Nagar, K.K. Nagar, Chennai – 600 078, (TIN: 33591425376), registered dealers in the files of Saligramam Assessment Circle, Chennai, dealing in Generators, Generator Sets and Parts and accessories thereof, have preferred application in Form 'VV' and sought clarification under Section

48-A (1) of the TNVAT Act, 2006, read with Rule 12-A of TNVAT Rules, 2007.

2. The applicant-dealers have sought for clarification on the following:

Rate of tax for **"Diesel Generator Sets (DG Sets)"**

3. The applicant-dealers have sought for personal hearing. The Authority for Clarification and Advance Ruling have convened a meeting for hearing on 14.02.2014 and the applicant-dealers were informed in writing to appear before the Authority on 14.02.2014. Thiru. C.Seshadri Nadan, Chartered Accountant and Authorized Representative of the Applicant-dealers has appeared before the Authority on 14.02.2014 for hearing and represented the company. The Authorized Representative of the Applicant-dealers has reflected the grounds as given in application.

4. The applicant-dealers have stated that they are dealing in single Phase to three phase Generators coupled with Diesel engines of wide range of capacities and makes, commercially known under various names, such as Generator sets, Diesel Generator Sets or DG sets. It bears the HSN based Central Excise and customs tariff code 8502. The sale of generator sets and its spares and accessories are made to the customers inside and outside the State either for own use or for trading, both at the concessional rate against Form 'C' and at the prescribed VAT rate if covered by no Form 'C' declaration. They have also stated that they are well aware, the Generators, generator sets and parts and accessories thereof are classified under Entry 39 in Part-C of First Schedule to the TNVAT Act, 2006 and the rate of tax has been reduced from 14.5 % to 5 % vide Government Notifications in G.O. Ms. No.154 dated 08.12.2012 and G.O. Ms. No.156 dated 09.12.2013, on "generator sets used for producing electricity". The description employed, "Generator Sets (Gen Sets) used for producing electricity", leads to the possible interpretations, such as (i) the reduced rate of 5 % is applicable only on sale of Generator Sets to an end user for use to generate electricity; and (ii) the reduced rate of 5 % is applicable as this description is meant for the generator sets capable of or intended for generating electricity. The said notification does not contemplate the ***user*** of the product and is unconditional. Filing of declarations for availing the benefit of reduced rate of tax is not envisaged in the notifications. Besides, it had been clarified by the Authority for Clarification and Advance Ruling in ACAAR 88/2012-13 dated 14.02.2013 that "Diesel Generator Sets" used for producing electricity is taxable at the reduced rate of 5 % from 07.12.2012 and at 14.5 % up to 06.12.2012. Relying on the earlier clarification, the applicant-dealers have pleaded that they may also be accordingly clarified,

regarding the rate of tax applicable on sale in the course of interstate trade or commerce falling under subsection (2) of section 8 of the CST Act, 1956, i.e., the interstate sale not covered by Form 'C' declaration.

5. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006 and Rules, 2007. The clarification is given accordingly as under:

5.1. Section 48-A of TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities.

5.2. The applicant-dealers have sought for clarification regarding rate of tax for "Diesel Generator Sets."

5.3. Entry 39 in Part–C of First Schedule to the TNVAT Act, 2006 reads, as produced below:

> "**Generators, Generating sets and non-electronic voltage stabilizers**"

As per this Entry Generators and Generating Sets are liable to tax at the rate of 14.5 %. Generators used for producing electricity were subjected to tax at the reduced rate of 4 % vide Notification No. II(1)/CTR/11(b-1)/2008 (1) dated 00.00.2008 in GO. Ms. No.36/CT&R (B2) Dept, dated 04.08.2008, with effect from 01.04.2008 to 11.07.2011 and at 5 % with effect from 12.07.2011 vide Notification No.II(1)/CTR(R-23)/2011 dated 11.07.2011 in GO.Ms. No.78/CT&R(B2) Dept. dated 11.07.2011. Rate of tax for "Generating Sets used for producing electricity" has been reduced to 5 % with effect from 07.12.2012 vide Notification No. II(1)/ CTR/ 35(b2)/2012 dated 08.12.2012 in GO.Ms. No. 154/CT&R (B2) Dept. dated 08.12.2012. Further, the reduction in rate of tax for Generating sets from 12.5.% to 4 % up to 11.07.2011 and from 14.5. % to 5 % from 12.07.2011 to 06.12.2012 has been ordered for the generating sets by Notification in GO. Ms. No.156/CT&R (B2) Dept. dated 09.12.2013. This reduction in rate in respect of Generating Sets has been given deemed effect as having come into force from 01.04.2008 on par with the reduction in rate of tax for Generators, subject to certain conditions that (i) there shall be no refund if tax has been collected and paid at 12.5 % and 14.5 % as the case might be; (ii) ITC shall be allowed for the respective period on the purchases of generating sets provided the tax has been collected and paid at 12.5 % and 14.5 % respectively; (iii) the difference of tax shall be paid if the tax has been collected at 12.5 % and 14.5 % in the respective periods from 01.04.2008 to 06.12.2012, but paid only at 4 % and 5 % respectively; and (iv) ITC shall be allowed at the rate of 4 % and 5 % respectively for the respective periods from 01.04.2008 to 06.12.2012, if the tax has been paid at 12.5 % and 14.5 % but collected at 4 % and 5 % as the case might be. As per the Notification in GO. Ms. No.156/CT & R (B2) Dept. dated 09.12.2013, the Generating Sets are liable on par with the generators to tax at the reduced rate of 4 % from 01.04.2008 to 11.07.2011 and 5 % from 12.07.20111 onwards on sale inside the State.

5.4. The applicant-dealers are dealing in single Phase to three phase Generators coupled with Diesel engines of wide range of capacities and makes, commercially known under various names, such as Generator sets, Diesel Generator Sets or DG sets. It bears the HSN based Central Excise and customs tariff code 8502. The sale of generator sets and its spares and accessories are made effected by the applicant-dealers to their customers inside and outside the State either for own use or for trading, both at the concessional rate against Form 'C' and at the prescribed VAT rate if covered by no Form 'C' declaration. The applicant-dealers aware that the generator sets and parts and accessories thereof are classified under Entry 39 in Part-C of First Schedule to the TNVAT Act, 2006 and the rate of tax has been reduced from 14.5 % to 5 % vide Government Notifications in G.O. Ms. No.154 dated 08.12.2012 and G.O. Ms. No.156 dated 09.12.2013, on "generator sets used for producing electricity". The description employed, "Generator Sets (Gen Sets) used for producing electricity", leads to the possible interpretations, such as (i) the reduced rate of 5 % is applicable only on sale of Generator Sets to an end user to generate electricity; and (ii) the reduced rate of 5 % is applicable as this description is meant for the generator sets capable of or intended for generating electricity. Since the generators or generating sets cannot be used for any purpose other than generating electricity, the second one is the most conceivable interpretation, paving way to construe that the sale of generating sets either to end user for own purpose of generating electricity or to the traders for further sales to the end users would attract the levy only at the reduced rate by virtue of Notification.

5.5. Moreover, said notification as correctly pointed out does not contemplate the ***user*** of the product and filing of declarations or certificates as obtained from the end users for availing the benefit of reduced rate of tax is not envisaged in the notifications. Besides, it had been clarified by the Authority for Clarification and Advance Ruling in ACAAR 88/2012-13 dated 14.02.2013 that "Diesel Generator Sets" used for producing electricity is taxable at the reduced rate of 5 % from 07.12.2012 and at 14.5 % up to 06.12.2012. Therefore, the sale of generator or generator sets would attract the levy at the reduced rate of 5 % either to end user for his own use or to the other dealers in this line of business for resale.

5.6. Regarding the rate of tax applicable to the spares and accessories of the generators and generating sets, both the Entry 39 in Part-C of First Schedule and the said notifications are silent and nothing specified. As per the proviso section 3(2) of TNVAT Act, 2006, the spare parts, components and accessories of a specific commodity under particular entry in First Schedule are not though enumerated under that entry would also attract the levy at the same rate as that of the commodity. But, the reduction in rate of tax from 14.5 % to 5 % for generators and generator sets as per the above mentioned notifications is not applicable to the spares and accessories, as there is no specific mention about the spares and accessories of the same. The proviso to section 3(2) is emphatically applicable only in respect of the entry in the schedule and not to the notification and it cannot be construed as implied. Therefore, the spares and accessories of the generators and generator sets are liable to tax at 14.5 % by virtue of Entry 39 in Part-C of First Schedule to the Act, 2006.

6. The clarification is therefore be that, -

(i) the **"Diesel Generator Sets" used for producing electricity is liable to tax at the reduced rate of 5 % by virtue of Notification No. II(1)/ CTR/ 35(b2)/2012 dated 08.12.2012 in GO.Ms. No. 154/CT&R (B2) Dept. dated 08.12.2012 with effect from 07.12.2012** and also at 5 % in the period from 12.07.2011 to 06.12.2012 subject to the conditions prescribed in GO. Ms. No.156/CT&R (B2) Dept. dated 09.12.2013, on sale inside the State either to a trader or to an end user;

(ii) the diesel Generator Sets would attract the levy at the same reduced rate of 5 % even on supply as part and parcel of contract for supply, erection and commissioning of the generator sets; and

(iii) the rate of tax applicable to the spares, components and accessories of the generator sets is 14.5% under Entry 39 of Part-C of First Schedule to the TNVAT Act, 2006.

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| R. Vayanaperumal,<br>Additional Commissioner (PR) (FAC) | K. Mahalingam,<br>Additional Commissioner (RP) | K. Rajaraman,<br>Principal Secretary/<br>Commissioner of Commercial Taxes |

To

Tvl. Mona Generator Services (P) Ltd.
No.33/28, Rani Anna Nagar,
KK Nagar,
Chennai – 600 078. [RPAD]

Copy to:
The Assistant Commissioner (CT)
Saligramam Assessment Circle.

The Joint Commissioner (CT),
Chennai (South) Division.

The Joint Commissioner (CS)
**To host in the Department Website**

The Principal Secretary to Government, Commercial Taxes & Registration Department, Chennai – 9.
All Joint Commissioners (CT) including Enforcement, LTU, MOU and ISIC.
All Deputy Commissioners (CT), Territorial, Assessment and Enforcement
All Head of Offices (Assessment)
The State Representative, Sales Tax Appellate Tribunal, Chennai – 104.
The Addl. State Representative, (AB) Chennai, Madurai and Coimbatore.
The Director, CTSTI, Greams Road, Chennai – 6.
The Executive Officer, Traders Welfare Board, Chennai – 5.
The Accountant General (Audit)-II, No.44, Greams Road, Chennai – 6.
The Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Commercial Tax Officers in CCT's Office.
Personal Clerk to the CCT.
Stock File3 / Acts Cell-II / Spare – 5.

//Forwarded/By order//

Additional Commissioner (PR) (FAC)