

**DEPARTMENT OF COMMERCIAL TAXES, KERALA**  
**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION**  
**U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.**

*Members present are:*

**1. T.K. Ziavudeen.**  
***Joint Commissioner (A&I),***  
***Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.***

**2. N. Thulaseedharan Pillai.**  
***Joint Commissioner (General),***  
***Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.***

**3. V.J. Gopakumar.**  
***Deputy Commissioner (General),***  
***Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.***

Sub : KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of disposable plastic tumblers, trays, containers etc. – Orders issued.

Read : Application from M/s. Talash Plastopacks, Pappinisseri, dtd. 29/4/2013.

**ORDER No.C3/12914/13/CT DATED 19/4/2016.**

1. M/s. Talash Plastopacks, Pappinisseri has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of the commodities disposable plastic tumblers, trays, containers etc.

2. The applicant would contend that they are manufacturing plastic packing materials such as cups, tumblers, containers, lids, packing material – plastic etc. which are mainly used for the packing of food products by industries, hotels, restaurants etc. As per the Kerala Finance Act – 2013, the rate of tax on ***Disposable Plates, Cups and Leaves made of Plastic*** was increased to 20%. The applicant submits that even though the increased rate is applicable only to plates, cups & leaves made of plastic, they are facing issues in check posts, where the authorities are of the view that VAT on all disposable plastics is 20%. The applicant contends that the items manufactured by them are plastic trays, plastic containers, plastic cups etc. and there is no justification to hold trays/containers as plates/cups or vice versa.

3. The applicant would also contend that the primary function of packing material is to protect the content packed in it from the influence of external sources. When food stuff is packed in containers/trays, it protects and keeps the food fresh for a longer time. The applicant's container protects the electronic components and connectors from damages. The applicant would further contend that the manufacturers/packers who pack their goods in containers or trays

consider packing materials as disposables; the end user may or may not reuse the products according to their taste and convenience. The applicant would also contend that all their products are reusable as all of them are made of food grade plastic with good quality and rigidity.

4. The applicant has requested to clarify the following points:

- I. Whether the increased rate would be applicable to goods which are used as packing materials.
- II. How the goods would be classified as disposable.
- III. To explain disposable plates. Normally plates mean a flat dish, typically circular or square from which food is eaten or served. Plates cannot be used for packing of foods. So trays, lids & containers would not fall under this category.
- IV. To explain disposable cups. Normally cup means a small bowl shaped container for drinking from typically upto a size of 130ml.
- V. Cups of above 130ml are referred as Tumbler. Tumblers above 250ml are used as packing material. How to differentiate between cups and tumblers.
- VI. Whether the increased rate would be applicable for disposable foam, thermocol, XPS, paper plates, cups and leaves which are manufactured out of plastics or are coated with plastics.

5. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

6. The applicant manufactures cups, tumblers, containers etc. of plastic which are admittedly used for packing of food products by the entities in hospitality industry i.e. hotels, restaurants etc. The applicant has also produced a few samples of the products manufactured by them.

7. The term 'disposable' has not been specifically defined in the Kerala Value Added Tax Act and hence common parlance test has to be resorted to. According to the Oxford Essential Business and Office Dictionary, the word 'disposable' means (*adj.*) '*intended to be used once, then thrown away*' and (*n.*) '*thing designed to be thrown away after one use*'. As such, it is apparent that disposable items are throw-away types which are not meant for repeated use. The cardinal point is the intention of the manufacturer and the user. An examination of the samples produced by the applicant would show that they are clearly disposable type products. Plates and cups do not cease to be a plate and cup and become a container merely for the reason that they have lids.

8. In view of the facts stated supra, it is hereby clarified that all disposable plastic cups and tumblers irrespective of its size, capacity, shape etc. would be taxable at the rate of 20% by virtue of Serial No. 3A of the Table to clause (a) of Section 6(1) of the Kerala Value Added Tax Act w.e.f. 1/4/2013. Styrofoam

(Thermocol) cups and plates would be taxable at the rate of 20% by virtue of Serial No. 3A of the Table to clause (a) of Section 6(1) w.e.f. 1/4/2015. Paper cups are exempt from tax by virtue of Entry 35A of the First Schedule to the Act w.e.f. 1/4/2014. Thick plastic trays which are used as packing materials for electronic items would be taxable at the rate of 5% by virtue of Entry 174 to List-A attached to Third Schedule to the Act.

The issues raised above are clarified accordingly.

<b>T.K. Ziaudeen</b> <b>Joint Commissioner (A&amp;I)</b>	<b>N. Thulaseedharan Pillai</b> <b>Joint Commissioner (General)</b>	<b>V.J. Gopakumar</b> <b>Deputy Commissioner (General)</b>
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To

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