

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. Ziaudeen.

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 thermocol disposable plate during the years 2013-14 & 2014-15 – Orders issued.

Read : Application from M/s. Mas Make Polymers, Palakkad dtd. 6/10/2015.

ORDER No.C3/34789/15/CT DATED 9/3/2016.

1. M/s. Mas Make Polymers, Palakkad has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax thermocol disposable plate during the years 2013-14 & 2014-15.

2. The applicant would contend that Thermocol fell under Entry 174(8) of List A of the Third Schedule to the Kerala Value Added Tax Act, 2003. However, by the Kerala Finance Act, 2013, the following item was inserted in the Table under Section 6(1) of the Act:

3A. Disposable plates, cups and leaves, made of plastic	*****	20%
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Again, by the Kerala Finance Act, 2015, the words, 'including styrofoam and styrofoam sheets' were added at the end of the above entry. So, after such amendment, Entry 3A of the Table under Section 6(1) of the Act reads as follows:

3A. Disposable plates, cups and leaves, made of plastic, including styrofoam and styrofoam sheets.	*****	20%
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So, disposable plates, cups and leaves made of styrofoam and styrofoam sheets were brought in the table under Section 6(1) of the Act only with effect from 1/4/2015.

3. The applicant placing reliance on the Rules of Interpretation of Schedules appended to the Act would contend that the entry covering disposable

plates made of styrofoam and styrofoam sheets, without HSN was brought in the Table under Section 6(1) of the Act only with effect from 1/4/2015.

4. The applicant would also contend that the general rule of interpretation of statutes is that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said [Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd. vs. Custodian of Vested Forests (AIR 1990 SC 1747 at p.1752)]. Again in State of Jharkhand & Another Vs. Govind Singh (AIR 2005 SC 294 at p.297) the Hon'ble Supreme Court said:

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it an instinctive, as well a strained reluctance to do so.

The same stand has been taken by the Hon'ble Supreme Court in Keshavji Ravji & Co. Vs. Commissioner of Income Tax (AIR 1991 SC 1806), where the Hon'ble Court held:

As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfurl the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words use in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature.

5. The applicant would further contend that where the words '**including styrofoam and styrofoam sheets**', which goes along with '**made of plastic**', was inserted only with effect from 1/4/2015, disposable plates made of styrofoam and styrofoam sheets came to be included in the Table under Section 6(1) of the Act only with effect from 1/4/2015. The applicant has requested to clarify the rate of tax of the commodity.

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

7. An examination of Entry 174(8) of the List A of the Third Schedule to the Kerala Value Added Tax Act, 2003, would show that the intention of the Legislature was to include only packing materials and articles for conveyance or packing of goods within the ambit of the above Entry. The impugned commodity is not a packing material and hence, would not fall within the ambit of the above

said entry. Further, none of the entries in any of the Schedules to the Act is suitable for incorporating the commodity.

8. By virtue of Kerala Finance Act, 2013 an amendment was made in the Table appended to sub-section (1) of Section 6 of the Kerala Value Added Tax Act, 2003 whereby disposable plates, cups and leaves, made of plastic were made taxable at 20%. Kerala Finance Act, 2015 amended the said entry to include disposable plates, cups and leaves made of styrofoam and styrofoam sheets also under 20% tax rate. However, this amendment was given effect from 1/4/2015 only.

9. In view of the facts stated supra, it is hereby clarified that the commodity in dispute viz. 'thermocool disposable plate' was taxable at RNR by virtue of Entry 103 of S.R.O. No. 82/2006 during the periods prior to 1/4/2015. Therefore from 1/4/2015, it would be taxable at the rate of 20% by virtue of Serial No. 3A of the Table to sub-section (1) of Section 6 of the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen
Joint Commissioner (A&I)

N. Thulaseedharan Pillai
Joint Commissioner (General)

V.J. Gopakumar
Deputy Commissioner (General)

To

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