

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 (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. Dr. A. Bijikumari Amma.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

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

Sub : KVAT Act, 2003 – Clarification U/s 94 – Whether sale of burgers, chicken, cooked rice with gravy, wraps and french fries would qualify as cooked food under Entry 30A of the Third Schedule – Orders issued.

Read : Application from M/s. Yum! Restaurants (India) Pvt. Ltd., Vyttila, Kochi dtd. 26/11/2014.

ORDER No.C3/36087/14/CT DATED 6/4/2016.

1. M/s. Yum! Restaurants (India) Pvt. Ltd., Vyttila, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether sale of burgers, chicken, cooked rice with gravy, wraps and french fries would qualify as cooked food under Entry 30A of the Third Schedule to the Act.

2. The applicant i.e. M/s. Yum! Restaurants (India) Pvt. Ltd. is engaged in the business of operation of restaurants under the brand name 'KFC' in Kerala. The applicant is registered as a dealer under the Kerala Value Added Tax Act, 2003 bearing TIN 32071386767. The applicant deals in sale of cooked food products in its restaurants. The main items prepared and served in the restaurants are burger, fried chicken in addition to other cooked items such as rice, wraps, fries etc.

3. The applicant would contend that any item which qualifies as a cooked food and not used for the purpose specified therein would fall under the Entry 30A of the Third Schedule. The applicant is not dealing in any of the specified purposes in the entry i.e., it is not serving / supplying cooked food to any airline business, shipping business or five star hotels. The applicant is only a restaurant

chain operating across India including Kerala and serving cooked food to the end consumer.

4. The applicant would contend that the term 'cooked food' is not defined in the Act. Accordingly, the said term would have to be understood from various judicial precedents. The Supreme Court in the case of *Harrison Malayalam & Anr. Vs. Union of India* [138 STC 610 (SC)] has held that the word 'food' in the general sense of term is that which is eaten or drunk for nourishment. It is a nutritive material taken into the body for the purpose of growth, repair or maintenance, that which is eaten or drunk for nourishment, whatever supplies nourishment to organic bodies. In other words, the word 'food' means something which can be eaten. The applicant placing his reliance on various judicial precedents reported in *State of Gujarat Vs. Gokaldas Trading Co.* [1991 (82) STC 248], *Commissioner of Sales Tax Vs. Regal Dairy* [47 STC 374 (All)], *Santosh Kumar Ghosh Vs. CTO* 1965 [(16) STC 1931 Calcutta High Court] and *Clarification Order No. C3/25969/12/CT* dtd. 23/4/2013, would contend that the following are required for any food item to qualify as 'cooked food':

- I. It should be a food, taken during the meal hours; and
- II. It should be prepared by heating, boiling etc.

5. The applicant has detailed the process of cooking of each of the product which is extracted hereunder:

1. Chicken: *Chicken is one of the main items prepared and served in the restaurants. Chicken pieces of various shapes and forms (like thighs, drums, wings etc.) are stored in a frozen state at the temperature ranging from -18 deg. C to -23 Deg. C. These chicken pieces before usage for preparation of cooked chicken are thawed in chilled state for 9-15 hours at a temperature ranging from 2 deg. C to 4 deg. C, so as to enable them to be fit for cooking and consumption. Thawed chicken pieces are placed in a tank for marination process, where spices and other ingredients are mixed with the chicken pieces to provide unique KFC flavour. Chilled water along with spices and other ingredients are poured over the chicken pieces in the tank. The temperature is maintained at 2 deg C to 4 deg C to ensure that spices and other ingredients are evenly mixed with the chicken pieces. After the marination process, marinated chicken pieces are drained and repacked in non-perforated bags in specified quantities and stored for a minimum period of 2 hours. Chicken pieces, so obtained are cooked which can be classified under two categories.*

- a. *Fried: The marinated chicken pieces are breaded, where chicken are kept in the breading lug and scoop / fold 7 times. Afterwards, chicken pieces are placed in dip basket and dipped / rolled after which the chicken pieces are again scoop / fold. The breaded chicken pieces so obtained are kept in racks, which are fried as per requirement. These chicken pieces are then deep fried in cooked oil at the temperature ranging from 225 deg C to 250 deg C for an approximate time of 10 mins. The fryer equipments are designed in a manner that indication for cooking appears only when oil is reached at the desired temperature. These chicken pieces are served hot to the customer.*
- b. *Grilled: The marinated chicken pieces are placed on the bun pan tray with racks in fiery grilled equipments and are sprinkled with spices. Chicken pieces are placed in the oven and grilled at the temperature of around 171 deg C for a time period ranging from 10 min to 20 mins. The grilled chicken pieces so obtained are removed from the grilled equipments are hold in the cambro container, which are served hot to the customer.*

The applicant would contend that given the above process for the preparation of grilled / fried chicken, chicken pieces are duly thawed, marinated, grilled / fried before they become ready for consumption and accordingly, cooked chicken pieces should qualify as 'cooked food', thereby liable to VAT at the rate of 5%.

2. Burgers: Burgers consists of a bun / bread and patty:

- a. Bread i.e., bun or muffin which is used as a product component is either stored at room temperature or in frozen condition at – 18 deg Celsius. Frozen breads before use is brought to room temperature by thawing. Bread is toasted at 216 deg F with the help of toaster. By virtue of toasting, the sugar present in the bread burns at this high temperature and gets caramelized. This turns the bread down on its surface and provides characteristic roasted flavour to bread. Toasting also causes the starch molecules present in the bread first to break apart and gets gelatinized at this high temperature to form new combination of atoms. This chemical reaction makes the inner surface of the bread hard and crisp. It facilitates for spreading and retention of dressing sauces on the surface of the bread and provides a unique and crispy bite to burger which is most liked by the customer.
- b. Patty is the filling between the burger bun halves.
 - i. Veg patty: Semi-cooked patty is purchased in frozen state and contains diced blend of vegetables and is coated by breading materials consisting of bread crumbs, corn meal, cracker meal and various prepared batter mixes and batters containing pre-gelatinized corn flour which provides coatings. The same is cooked by deep-frying in vegetable oil at approx 180 deg F for a period of 3 to 5 mins.
 - ii. Non-Veg patty (chicken) is the processed form of chicken, the process of which is provided in point 1.
- c. After preparation of breads and patty, the burger is assembled. Bun halves are kept at the burger station pan and veg / non-veg patty along with other ingredients like sauce, lettuce etc. are placed in the burger. The burger is packed in the clamshell and served hot to the customer.

The applicant would contend that since heating is a part of cooking which makes it ready for consumption, burger should qualify as 'cooked food', thereby liable to VAT at the rate of 5%.

3. Cooked Rice with Gravy: Cooked rice with gravy consists of 2 items namely bowl or rice with rogini gravy.

- a) Rice – Raw rice is washed and soaked for 30 mins, after which excess water is drained. Measured quantity of water along with rice is put in a rice cooker and remaining ingredients like salt, seasoning, cut vegetables etc. are added. Thereafter, rice is cooked in the cooker for an approx. time of 10 mins. After the completion of the cooking process, the measured quantity of yellow micro fine powder is mixed with rice in a specified manner without breaking it. Rice is prepared and can be served hot within a maximum time period of 4 hours.
- b) Gravy – Oil is heated in a pan and sliced onions are stirred in the oil. Fried onions are allowed to cook and after the same are placed in the mixer grinder along with other ingredients like tomatoes, ginger, garlic and green chillies. A fine puree is made out of the same. Pan is reheated by putting puree and other items like cloves, peppercorns and salt. Pan is left to cook on a low flame for about 5 to 6 minutes, till the gravy thickens and a nice colour comes out of it. Afterwards, the spices and chopped coriander leaves are stirred in the gravy.

The applicant contends that from the above, it is clear that rice is cooked in the cooker and the gravy is also cooked in the pan to make them ready for consumption and therefore, the same should qualify as 'cooked food'.

4. Wraps: Wraps consists of a tortillas and patty:

- a) Tortillas which are used as a product component is either stored at room temperature or in frozen condition at -18 deg Celsius. Frozen tortillas before use is thawed at the temperature of 20 deg C to 26 deg C for a period of 4 hours to 13 hours. Tortillas are warmed for 5 hours with the help of upright holding cabinet – moist. By virtue of warming, the tortillas become softer and fresher.
- b) Patty is the filling in the tortillas. Semi cooked patty is purchased in frozen state and then cooked by deep frying in vegetable oil at 180 deg F for 4.5 minutes. Patty are of 2 types – veg patty and non-veg patty. Veg patty contains diced blend of vegetables and is coated by breading materials consisting of bread crumbs, corn meal, cracker meal and various prepared batter mixes and batters containing pre-gelatinized corn flour which provides coatings.
- c) Non-veg patty is the processed form of chicken, which is covered under point 1.
- d) After preparation of tortillas and patty, twister is assembled. Various other ingredients like sauce, shredded lettuce, slices onions are added along with veg / non-veg patty. The tortilla is folded with other ingredients in a predefined shape and thereafter grilled in the toaster at 250 deg C for a period of 15 seconds. The twister is slid in its packing and served hot to the customer.

The applicant would contend that above process includes heating / grilling of tortillas, cooking of patties and assembling of twister, which should qualify as 'cooked food'.

5. French fries : French fries are kept in the frozen state and pulled in the desired quantities. These are immediately kept in fry basket(s) for deep frying. French fries in the fry basket are deep fried at the temperature of 169 deg C for 3 minutes. After deep frying, salt is added to the fried and cooked.

The applicant would contend that the cooking process of preparation of French fries includes deep frying and heating of and therefore, should qualify as 'cooked food'.

6. The applicant has requested to clarify whether the above said items would qualify as cooked food falling under Entry 30A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

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

8. Entry 30A of the Third Schedule to the Act relied on by the applicant reads:

30A Cooked food other than those served to any airline service company or institution or shipping company for serving in aircraft, ship or steamer or served in aircraft, ship, steamer, bar attached hotels and star hotels.

9. The process of making chicken – fried and grilled, burgers, cooked rice with gravy, wraps consisting of tortillas and french fries, as described by the applicant, involves a process of preparation and cooking and these items are sold and served in the applicant’s restaurant. As such, it can safely be concluded that the impugned products will fall under the category of cooked food and hence would be taxable at the rate of 5% by virtue of Entry 30A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

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Joint Commissioner (Law)

N. Thulaseedharan Pillai
Joint Commissioner (General)

To,

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