

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. *K.J. Valsala Kumari, Joint Commissioner (General), O/o. CCT, Tvpm.*
2. *T.V. Kamala Bai, Joint Commissioner (Law), O/o. CCT, Tvpm.*
3. *S.K. Suchala Kumar, Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.*

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Rate of tax of gas oven, spiral kneading machine, cake kneading machine, bread slicing machine, sheeter machine, moulder machine, vegetable cutting machine, meat mincing machine, sugar powdering machine and flour kneading machine used in bake houses - Orders issued.

Read :- Application from M/s. Mangal Bakery Equipments, Aluva dtd. 12/3/2012.

ORDER No.C3/9234/12/CT DATED 28/11/2012.

1. M/s. Mangal Bakery Equipments, Aluva has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of gas oven, spiral kneading machine, cake kneading machine, bread slicing machine, sheeter machine, moulder machine, vegetable cutting machine, meat mincing machine, sugar powdering machine and flour kneading machine used in bake houses.

2. The assessing authority classified the said items under Entry 32(1)(a) and (b) and Entry 32(2) of S.R.O. No. 82/2006.

3. With regard to the commodity 'gas oven' the applicant would contend that the Customs Tariff Item relating to the HSN Code 8516 appearing in Entry 32(2) and 32(3) of S.R.O. No. 82/2006 covers only appliances which are used for domestic purposes. The ovens sold by the applicant is purely for industrial use. The applicant has referred HSN 8514 appearing in Entry 83(59) of the Third Schedule to the Kerala Value Added Tax Act and also the Clarification Order No. C3/27594/09/CT dated 15/3/2010 and would contend that ovens sold by them are solely for industrial use and are unfit for kitchen use. The applicant contends that all the ovens sold by them would fall only under Entry 83(59) of the Third Schedule to the Act and will attract 5% tax only.

4. The applicant has also referred to sub-section (1) of Section 6 of the Kerala Value Added Tax Act, 2003, Rules of Interpretation of the Schedules and the judgment in Reckitt-Benckiser (India) Ltd. case and would further contend that the HSN Codes assigned to Entry 32(1)(a) and (b) of S.R.O. No.82/2006 are 8509.40.10 and 8509.40.90 which covers only

appliances used for domestic purposes. The applicant's contention is that the equipments other than gas ovens would fall under the HSN 8479.82.00 and will be covered only by Entry 83(55)(g)(ii) of the Third Schedule to the Act.

5. The applicant has produced brochures and sale bills relating to the commodities and would contend that their customers are mainly bake houses.

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

7. The commodity 'gas oven' would fall under the HSN Code 8516.60.00. The said HSN Code do not appear in any of the Schedules to the Kerala Value Added Tax Act, 2003. None of the entries in any of the Schedules to the Act is suitable for incorporating this commodity.

8. Entry 32 of S.R.O. No. 82/2006 is extracted hereunder

32 *Electrical domestic and commercial appliances including food processors like mixer, grinder, ovens, roti-maker, deep fat frier, curd maker; hot food cabinet, water heater including immersion heater, electric kettle, electric knife, cooking ranges washing machine, dish washer, electric iron, electric hair drier, electric hair remover, shavers, electric time switches, mechanical timers, vacuum cleaner, water purifier, drier, coffee roasting appliances, floor polishers, massage apparatus, vending machines other those specifically included under any other entry in this List or in any of the schedules.*

(3) Other ovens; cookers, cooking plates, boiling rings, grillers and roasters

8516.60.00

9. The said entry takes within its ambit not only domestic appliances but also commercial appliances. Hence appliances having commercial use will also be included in the said Entry. As such the commodity 'gas ovens' which are used in bake houses would be taxable at the rate of 13.5% by virtue of Entry 32(3) of S.R.O. No. 82/2006.

10. The commodities spiral kneading machine, cake kneading machine, bread slicing machine, sheeter machine, moulder machine, vegetable cutting machine, meat mincing machine, sugar powdering machine and flour kneading machine are mainly used by bake houses for preparing bakery items. The said commodities would fall under the HSN Code 8479.82.00 appearing in Entry 83(55)(g)(ii) of the Third Schedule to the Kerala Value Added Tax Act, 2003 which is extracted hereunder:

83 *Machinery of all kinds (other than those specifically mentioned in this schedule or in any other schedule)*

(55) Machines and mechanical appliances having individual functions, not specified or included elsewhere

(g) Other machines and mechanical appliances

(ii) Mixing, kneading, crushing, grinding, screening, sifting, homogenising, emulsifying or stirring machines

8479.82.00

11. Hence it is clarified that the commodities spiral kneading machine, cake kneading machine, bread slicing machine, sheeter machine, moulder machine, vegetable cutting machine, meat mincing machine, sugar powdering machine and flour kneading machine used in bakeries would be taxable at the rate of 5% by virtue of Entry 83(55)(g)(ii) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

K.J. Valsala Kumari
Joint Commissioner (General)
O/o CCT

T.V. Kamala Bai
Joint Commissioner (Law)
O/o CCT

S.K. Suchala Kumar
Joint Commissioner (A&I)
O/o CCT

To,

M/s. S. Anil Kumar, K.S. Hariharan & K. Uma Maheswar,
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