

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. Dr. A. Bijikumari Amma.

*Joint Commissioner (Law),
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 on handcrafted furniture – Orders issued.

Read : Application from M/s. Tip Top Furniture Industries, Parappur, Kottakkal dtd. 14/3/2014.

ORDER No.C3/9956/14/CT DATED 13/5/2016.

1. M/s. Tip Top Furniture Industries, Parappur, Kottakkal has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to the rate of tax of handcrafted furniture – wooden settee, wooden teepoy, wooden dining chair, wooden dining table etc.

2. The applicant is an assessee under the provisions of the Kerala Value Added Tax Act, 2003 and is engaged in the manufacture and sale of furniture - both conventional and handcrafted. The price payable on these two items is different. While the conventional furniture is having a lesser price, the price of handcrafted furniture is substantially higher. This difference in prices is on account of the handcrafting employed by the applicant for the manufacture of the latter.

3. The applicant would contend that handcrafted furniture is predominantly classifiable under Entry 54 of the Third Schedule to the Act. Sub-entry (4) of Entry 54 takes in its ambit wooden handicrafts falling under HSN 4421. The applicant, placing his reliance on the Rules of Interpretation of Schedules would contend that the handcrafted furniture

made by the applicant is classifiable under HSN 4421.90.90 and in turn under Entry 54 (4) of the Third Schedule to the Act. The applicant has also referred to the judgment of the Hon'ble Supreme Court in Reckitt Benckiser's Case (2008) 15 VST 10 to support his contentions.

4. The applicant would further contend that they were proceeded against under the provisions of the Central Excise Act, demanding duty on handcrafted wooden furniture on earlier occasions. The applicant claimed that these items referred above manufactured by employing handcrafts are exempt under the Notification No. 76/86. The Central Excise authorities took the stand that they are furniture classifiable under Chapter 94 and demanded duty accordingly. The matter was taken up by way of Appeal No. E. 558/02 to the CESTAT. The CESTAT by its order dtd. 4/12/2003 decided the issue in favour of the applicant. The Central Excise Department carried the matter in further appeal before the Hon'ble Supreme Court in CA No.4425/2004. This appeal was also rejected by Judgment dtd. 25/7/2005. Pursuant thereto, the Assistant Commissioner, Central Excise passed an order dtd. 22/2/2006 finding that the issue of classification of the products of the applicant is set at rest in the light of the above Judgment.

5. The applicant has requested to clarify that the items are assessable only at the rate of 4%/5% under Entry 54(4) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

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

7. Entry 54 of the Third Schedule to the Kerala Value Added Tax Act, 2003 as relevant to the context, is extracted hereunder:

54 Handicrafts

(1) <i>Worked ivory and articles of Ivory</i>	9601.10.00
(2) <i>Worked horn and articles of horn</i>	9601.90.40
(3) <i>Wood marquetry and inlaid wood; Caskets and cases for jewellery and cutlery and similar articles, of wood; Statuettes and other ornaments of wood</i>	4420
(4) <i>Other articles of wood</i>	4421
(5) <i>Articles made of jute</i>	5909.00.30
(6) <i>Other</i>	****

The Customs Tariff Item HSN Code 4421 reads as follows:

4421	OTHER ARTICLES OF WOOD
4421 10 00	- Clothes hangers
4421 90	- Other:
	---- Spools, cops, bobbins, sewing thread reels and the like, of turned wood:
4421 90 11	---- For cotton machinery
4421 90 12	---- For jute machinery
4421 90 13	---- For silk regenerated and synthetic fibres machinery
4421 90 14	---- For other machinery
4421 90 19	---- Other
4421 90 20	---- Wood paving blocks
4421 90 30	---- Match splints
4421 90 40	---- Pencil slates
4421 90 50	---- Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures
4421 90 60	---- Parts of domestic decorative articles used as tableware and kitchenware
4421 90 70	---- Articles of densified wood not elsewhere included or specified
4421 90 90	---- Other

Wooden furniture of various types is classified under the Customs Tariff Act HSN Code 9403 which, as relevant to the context, is extracted hereunder:

9403	OTHER FURNITURE AND PARTS THEREOF
9403 10	- Metal furniture of a kind used in offices:
9403 10 10	--- Of steel
9403 10 90	--- Other
9403 20	- Other metal furniture:
9403 20 10	--- Of steel
9403 20 90	--- Other
9403 30	- Wooden furniture of a kind used in offices:
9403 30 10	--- Cabinet ware
9403 30 90	--- Other
9403 40 00	- Wooden furniture of a kind used in the kitchen
9403 50	- Wooden furniture of a kind used in the bed room:
9403 50 10	--- Bed stead
9403 50 90	--- Other
9403 60 00	- Other wooden furniture
9403 70 00	- Furniture of plastics
	- Furniture of other materials, including cane, osier, bamboo or similar materials:
9403 81 00	-- Of bamboo or rattan
9403 89 00	-- Other
9403 90 00	- Parts

8. An examination of Entry 54 of the Third Schedule in the light of the principle of *ejusdem generis*, would show that the Legislature never intended to include any furniture

items within the ambit of Entry 54 of the Third Schedule to the Kerala Value Added Tax Act, 2003.

9. The Supreme Court and Tribunal decisions produced by the applicant were issued in the context of the issues related to Central Excise Tariff Act. The decisions pointed out by the applicant do not fit into the facts of the clarification in hand.

10. In the Kerala Value Added Tax Act scenario, notwithstanding anything contained in the above said decisions, the Authority for Clarification can independently apply the test laid down in the decision in Collector of Central Excise Vs. Louis Shoppe & Anr. to arrive at a decision as to whether the commodity is a handicraft or furniture. An examination of the photographs produced by the applicant would invariably show that the impugned commodities are nothing but furniture having some carvings/works meant to make them look more attractive. Handcrafted furniture cannot be equated with handicrafts. A consumer who purchases such furniture would not be using it as a show-piece or as an exhibition/display material, but only as a furniture item i.e. an article that is used to make a room or building suitable for living or working in.

11. Furniture items are not seen included in any of the Schedules to the Kerala Value Added Tax Act, 2003.

12. In the light of the facts stated above, it can safely be concluded that the commodities manufactured by the applicant like handcrafted wooden settee, wooden teepoy, wooden dining chair, wooden dining table etc. which are furniture items would be exigible to VAT at RNR by virtue of Entry 45(3) of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma
Joint Commissioner (Law)
(General)

N. Thulaseedharan Pillai
Joint Commissioner (General)

V.J. Gopakumar
Deputy Commissioner

To,

M/s. Tip Top Furniture Industries,
Parappur, Kottakkal.