

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 (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. Dr. A. Bijikumari Amma.
*Joint Commissioner (A & I),
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 – Rate of packing materials made out of plastic – Orders issued.

Read :- 1. Clarification Order No.C3/12914/13/CT dtd.19.04.16
2. Judgment of the Hon'ble High Court in WP(C) No. 23390 of 2016 dtd. 13-07-2016
3. Application dtd. 05-07-16 from M/s. Talash Plastopacks.

ORDER No.C3/22114/16/CT DATED 08/08/2017

1. M/s. Talash Plastopacks, Pappinisseri had 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. Accordingly, as per the Order read 1st paper above it was 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. 01/04/13. 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. 1/4/15. Paper cups are exempt from tax by virtue of Entry 35A of the First Schedule to the Act w.e.f. 1/4/14. 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.*

3. Aggrieved by the order, the applicant preferred WP(C) No. 23390 of 2016 before the Hon'ble High Court of Kerala. The Hon'ble Court vide its judgment dtd. 13-07-2016 directed to examine the above clarification order and pass orders with reference to the application read 3rd paper above. As per the direction of the Hon'ble High Court the applicant was heard afresh.

4. The applicant would submit that they are the manufacturer and dealer of disposable plates, cups, tumblers, containers, trays, bowls etc made of plastics falling under Schedule 33 (2), 137 (12), 174 (1), (5), (8), (9).

5. The applicant would contend that as per Finance Act 2013 **'Disposable plates, cups and leaves made of plastic'** were included under Table 3A to clause A of section 6(1) of the KVAT Act 2003 taxable at 20% and they have no dispute with regard to rate of tax on the aforesaid items made of plastic, as items are specific. They would also submit that over and above the afore said items, they are selling **Containers, trays, bowls** etc which would come under List A of 3rd schedule 'industrial inputs and packing materials' in Entry 174 – *'packing materials of all kinds, articles for conveyance or packing of goods of plastics, wood, paper, glass, jute, cartons, boxes and their wastes, sacks and bags other than those specifically mentioned in serial No (3) of clause 'a' of subsection 1 of section 6'*. The applicant would contend that the clause *'other than those specifically mentioned in serial No (3) of clause 'a' of subsection 1 of section 6'* was brought in as per Finance Act 2012 in consequence of the amendment bringing an Entry *'Carry bags made of plastic which have a self carrying feature, commonly known as vest type bags for any other feature to carry commodities excluding 'D' punched bags'*.

6. Further the applicant defines container, trays, lids, bowl and plates as under.

Container is an object such as a box, or a bottle which can be used for holding something, especially for the purpose of carrying or storing food, drink etc. It is known to all that, in Restaurants, Railway canteens etc., food items are sold as parcel which are packed in containers. This container is not plates or cups or leaves.

Trays are flat shallow container with a raised rim used for carrying food or drink. This too is not plates, cups or leaves.

Lids are removable or hinged cover for the top of container. This too is not plate, cup or leaves.

Bowl is a round deep dish or basin used for conveying food or liquid. This too is not plates, cups or leaves.

Whereas plate means a flat dish typically circular or square from which food is eaten or served and that plate cannot be used for packing foods. Cup is used for drinking water, tea etc.

7. The applicant would then contend that in short as per the Finance Act 2013, plates, cups, and leaves made of plastic alone have been brought under 20% goods, whereas containers, bowls, trays, lids etc have not been included in the above Entry 'Disposable plates, cups and leaves made of plastic'. Even 'Tumblers' has been brought in the above Entry only as per Finance Act 2016 by inserting the words 'Tumblers' in serial No 3A as per section 9 (1) (b) of the Finance Act 2016.

8. The applicant would also contend that from the above description it can be seen that the items plates, cups and leaves are entirely different and distinct from containers, trays, lids, bowls and boxes. The main distinguishing feature being, plates or cups do not have the ability to be used as packing materials, while the rest of the items are packing materials used for packing and conveying. These types of items would come under Entry 174 of List A of Third Schedule to KVAT Act 2003, taxable at 5%. In this connection, it is pertinent to point out that in Entry 174 of List A of Third Schedule to KVAT Act 2003, no amendment was made after the insertion of Serial No 3A of the Table to Clause 'a' of section 6 (1) of the KVAT Act 2003, like the one brought in as per Finance Act 2012, that 'other than those specifically mentioned in Serial No 3 of Clause (a) of sub section (1) of section 6' when Serial No 3 of Clause (a) of sub section (1) of section 6 was brought in.

9. The applicant has relied on the judgment of the Constitution Bench of **Hon'ble Supreme Court of India in Mathuram Agarwal v. State of Madhya Pradesh Appeal (Civil) 1990 of 1995, 1999 (4) Suppl SCR 195** wherein it was held that,

"The intention of the Legislature in a taxing statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing statute, it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic result so to be obtained by making the provisions which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to, or substituted so as to give a meaning to the statute which will serve the spirit and intention of the Legislature. The statute should clearly and unambiguously convey the three components of the tax law, i.e., subject of the tax, a person who is liable to pay the tax and the rate at which tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxing

statute, then there is no tax in law. Then it is for the Legislature to do the needful in the matter".

10. The applicant has requested to clarify the rate of tax of plastic tray, plastic containers, plastic box, plastic bowl and plastic lid.

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

12. The applicant has sought the rate of tax of plastic tray, plastic containers, plastic box, plastic bowl and plastic lid. In support of his contention, the applicant has produced a certificate issued from the office of the Assistant Commissioner of Central Excise wherein it is certified that

"they are classifying the goods manufactured by them under Chapter Heading 3923 of Central Excise Tariff Act, 1985 as "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics", attracting central excise duty @ 12.5% ad valorem."

13. As contented by the applicant, the items plates, cups and leaves made of plastic were brought in the higher rate through Kerala Finance Act 2013 and tumblers have been brought in this entry only on 01-04-2016 through KFA 2016. If the Legislature had any intention to include those items in the higher rate of tax @ 20%, then those items would have been specifically brought under the table to sec. 6(1)(a). The judgment of the Hon'ble Supreme Court of India in Mathuram Agarwal's case is significant in this regard. In the light of these facts, it is hereby clarified that plastic tray, plastic containers, plastic box and plastic bowl would come under Entry 174 of List A to the Third schedule, bearing HSN code 3923, and hence would be taxable @ 5%. Plastic lid would also be taxable @ 5% by virtue of Entry 174 of List A to the Third Schedule, bearing HSN code 3923.50.

The issues raised above are clarified accordingly.

**T.K. Ziaudeen
Thulaseedharan Pillai
Joint Commissioner (Law)
Commissioner (General)
O/o CCT**

**Dr. A. Bijikumari Amma
Joint Commissioner (A&I)
O/o CCT**

**N.
Joint
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To
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