Commercial Taxes Department
Government of kerala
Tax tower
Killippalam, Karamana
Thiruvananthapuram,Kerala-695002
www.keralataxes.gov.in

May 2017

CLARIFICATIONS 2015 and 2016

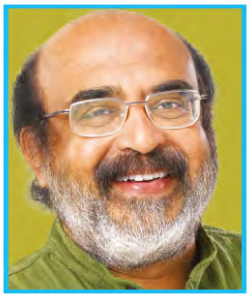
KERALA TAXES

Clarifications

2015 and 2016

KERALA TAXES

Government of kerala



Message

I am glad to see that the Commercial Taxes Department has brought out the compilation of all the Clarifications issued since 2015 to 2016. During my field visits and district level meetings, I have noticed that there is no uniformity in dealing with similar nature of cases. It is happening because of lack of information or knowledge about the processes and amendments brought in periodically. The Department has started the initiative of doing capacity building of officers. This will be complemented by providing resource documents to them such as Book on Clarifications. The Department has taken a very good initiative and completed the task.

This book will be handy to all officers as all the instructions issued in the year are covered. The officers may make use of the information to improve their functioning and equip themselves to generate more additional collectable demand thereby overall revenue.

I also suggest to the department to make the document available on website intranet for the use of officers.

I wish a grand success to the knowledge transfer initiative of the department.

Dr. T M Thomas Isaac
Finance Minister
Government of Kerala

Message

I am glad to see the compendium of Clarifications for years 2015 to 2016 have been brought out by the Department. The Commercial Taxes Department is taking various initiatives such as capacity building of officers. Now, in transition period from VAT regime to GST regime, it is very important that all the officers are equipped with knowledge and skills required to deal with the change management as well as tax administration. The one stop shop in the form of information book will complement the efforts of the department.

I appreciate the works done by the team and wish all the success to this initiative of knowledge transfer to the officials.

P Mara Pandiyan IAS
Additional Chief Secretary
Taxes, Excise, Registration & Forest
Government of Kerala

Foreword

This book is the second in series of a resource document on 'clarifications' for the use of Assessing authorities. The first in series was the book on Circulars were issued in 2015 and 2016. These books are now released with the objective of making available the important information to all the Assessing authorities as one stop shop. This will definitely reduce chances of mistakes on the part of the officers because of lack of knowledge. It will also bring in standardization and uniform approach in dealing with the assessment and other related processes by the officers.

Usually dealers seek clarification on some of the particular issues. These clarifications are for the particular case. However some of the clarifications are having general nature and therefore similar trade and similar circumstances needs similar application of laws.

This booklet will be handy for officers dealing with VAT cases. We urge officers to develop similar such systems at their own level during GST regime so as to facilitate the work at their respective offices.

The ITMC section will upload the book in 'knowledge management section' of KVATIS.

We look forward to the suggestions from all the officers to improve tax administration. The suggestions may be given on the email address - cct.ctd@kerala.gov.in

We appreciate the work done by Shri Justin in compilation of all the 'Clarifications'.

COMMISSIONER

Clarifications 2015

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

2. T.K. Ziavudeen.
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 elastic tapes, webbing tapes and ribbons of narrow woven fabrics – Orders issued.

Read : 1. Order No. C3/24037/12/CT dtd. 23/3/2013.

2. Application from M/s. The Kerala State Small Industries Association, Kalamassery dtd. 21/1/2014.

ORDER No.C3/4078/14/CT DATED 9/1/2015.

1. The Authority for Clarification U/s 94 of the Kerala Value Added Act, 2003, on an application from M/s. The Kerala State Small Industries Association, Kalamassery, had earlier clarified that *the commodity Hook and Tape Fastener classified under the HSN 5806 of the Central Excise Tariff Act would be exempt from tax by virtue of Entry 51(8)(f) of the First Schedule to the Kerala Value Added Tax Act, 2003* vide order read as paper 1st above.

2. Now, M/s. The Kerala State Small Industries Association, Kalamassery, has preferred a new application U/s 94 of the Act wherein they have submitted that previously they had sought clarification on the rate of tax of the commodity Narrow Woven Fabrics which includes Hook and Loop Tape Fasteners, Elastic Tapes, Webbing Tapes, Ribbons etc. But the clarification order was issued only with regard to Hook and Loop Tape Fasteners without considering the data available on the face of the record.

3. The applicant contends that the Authority ought to have been aware that even though the prayer paragraph of the Application in Form 24 was seeking clarification on the tax rate of the commodity Hook and Loop Tape Fasteners (Narrow Woven Fabrics), the clarification of tax rate ought to have been made for the other Narrow Woven Fabrics such as elastic tapes, webbing tapes and ribbons etc. since the applicant was seeking clarification of tax rate of the missing commodities referred above in the second paragraph of Form No. 24 application. The applicant has requested to rectify the above said clarification order by clarifying the tax rate of other Narrow Woven Fabrics such as elastic tapes, webbing tapes and ribbons etc.

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

5. The authorised representative of the applicant had produced samples of the impugned commodities before this Authority. These are tapes of poly propylene / nylon with a width of three centimetres. The side edges are not stitched or woven. These tapes are commonly found in footwear straps, bag straps and certain kinds of belts etc.

6. Narrow woven fabrics are classified under Chapter 58 of the Customs Tariff Act viz. ***Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery***.

7. Note 5 of Chapter 58 reads:

5. For the purposes of heading 5806, the expression "narrow woven fabrics" means:

(a) woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvedges (woven, gummed or otherwise made) on both edges;

(b) tubular woven fabrics of a flattened width not exceeding 30 cm; and

(c) bias binding with folded edges, of a width when unfolded not exceeding 30 cm.

Narrow woven fabrics with woven fringes are to be classified in heading 5808.

8. The Hon'ble High Court of Tamil Nadu in W.P. No. 11761 of 2006 **[Sky Industries Limited Vs. The Commissioner of Commercial Taxes, Chennai]** had held that a similar product, 'Hook and Loop Tape fastener' commonly known as 'Velcro' would fall under the HSN 5806. The Customs and Central Excise Tribunal, in Viva International Vs. Commissioner **2005(183) ELT 410 (Trl - Del)** had also held that 'Velcro tape' is classified under sub-heading 5806.32 of Customs Tariff Act, 1975.

9. Tapes with elasticity made of narrow woven fabrics can also be classified under the HSN Code 5806. 20.00.

10. In view of the facts stated supra, and on the examination of the samples produced before this Authority and also the relevant entries in the Customs Tariff Act, it can safely be concluded that such elastic tapes, webbing tapes, and ribbons made of narrow woven fabrics are classifiable under the HSN 5806 of the Customs Tariff Act and hence would be exempt from tax by virtue of Entry 51(8)(f) of the First Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

C. Lalappan	T.K. Ziavudeen	V.J.Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

M/s. Kerala Sate Small Industries Association,
Building No. X/26A,
HMT Industrial Ancillary Estate,
HMT Colony P.O,
Kalamassery – 683 503.

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

2. T.K. Ziavudeen.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

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

Sub:- KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of Clohex, Clohex Plus and Senquel AD Mouthwashes – Orders issued.

Read:- 1) Application from M/s.Dr. Reddy's Laboratories Ltd., Kochi dtd. 04-09-2013
2) Judgement of the Hon'ble High Court of Kerala in W.P.(C) No.23046 of 2013 (E) dtd.18-10-2013

ORDER No.C3/26631/13/CT DATED 9/1/2015.

1) M/s. Dr. Reddy's Laboratories, Kochi has preferred an application under Section 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodities Clohex, Clohex Plus and Senquel AD Mouthwashes.

2) The Hon'ble High Court of Kerala vide Judgment read as 2nd paper above, directed this Authority to deal the application in accordance with law.

3) Accordingly, the authorized representative of the applicant, Sri.P.R.Venkatesh, Advocate, Kochi was heard in the matter and the contentions raised have been examined.

4) The applicant had produced the sample of the products and the product literature intended for marketing requested to clarify the tax rate of the following items:

(i) "Clohex" brand Chlorhexidine Mouthwash BP composing of Chlorhexidine Gluconate solution 0.2% W/V in a flavoured aqueous base with colour in retail bottle packet of 150 ml manufactured by Group Pharmaceuticals Ltd., Kolar District, Karnataka marketed by Dr. Reddy's Laboratory Ltd., Hyderabad;

(ii) "Clohex Plus" brand mouth wash composing of Chlorhexidine Gluconate solution 0.2% W/V, Sodium Fluoride IP 0.5% W/V and Zinc Chloride IP 0.9% W/V in a flavoured aqueous base with colour in retail bottle packet of 150 ml manufactured by Group Pharmaceuticals Ltd., Kolar District, Karnataka marketed by Dr. Reddy's Laboratory Ltd., Hyderabad;

(iii) "Senquel AD" brand mouth wash composing of Potassium Nitrate B.P with 3% W/V, Sodium Fluoride IP with 0.2% W/V in a flavoured aqueous base with colour in retail bottle packet of 200 ml with label "Desensitising Mouthwash" manufactured by Group Pharmaceuticals Ltd., Kolar District, Karnataka marketed by Dr. Reddy's Laboratory Ltd., Hyderabad.

5) The applicant has also submitted that in the case of Clohex, the main ingredient is Chlorhexidine, Gluconate and in the case of Clohex Plus, it would be Chlorhexidine with Zinc Chloride. The product Clohex is used mainly for treatment in the case of gingivitis. It also has ingredients that inhibit plaque and it is an effective antibacterial agent. This product is not used as any other routine mouth wash merely for avoiding bad breath. This is actually having a medicinal effect. Similar is the case of Senquel-AD also. The ingredients therein are also medicinal in nature and it is indicated for use in the cases of dentinal hygiene gingivitis and it is used for reducing sensitivity and it carries preventive effect also. Therefore the said product cannot also said to be a mere mouth wash.

6) The product Clohex Plus is prepared and manufactured specifically for patients undergoing chemotherapy. As stated, many patients in the range of 30 to 60% who receive radiation chemotherapy develop oral mucositis and Chlorhexidine as a preventive has a record to show that its use leads to improvement in clinical parameters in patients irradiated for head and neck cancer, inhibits the formation of volatile sulphur compounds and reduces oral mal-odour. Photocopy of literature containing information and indication of this

product was also produced. All these products have been registered before the Drugs Licensing Authority. On an examination of the contents it can be seen that the physician's direction is emphasized. Therefore by no stretch of imagination can this medicinal preparation in the form of mouth wash be treated and classified as a non-medicinal product, as it is in the form of a mouth wash. It is also significant to note that these products are used in the most sensitive region of the human body. Unless it is manufactured with proper medicinal agent, it could lead to many other side effects and complications.

7) They have also contended that the mouth wash is a drug delivery system to deliver the drug to mucosa and gums of the mouth. Hence, presentation of the product as mouth wash will not take out its character as a drug or medicine mentioned in Chapter 30 of the Customs Tariff Act.

8) The applicant has relied on:

(i) A copy of the Certificate of Renewal of License No.KTK/25/475/2001 in Form No.26 dtd.21-04-2012 issued by the Drugs Controller and Licensing Authority, Drugs Controller for the State of Karnataka to M/s.Group Pharmaceuticals Ltd., showing the details of the approved list of Drugs wherein Sl.No.84 mentions Clohex Plus Mouthwash, Sl. No.85 mentions Senquel AD Mouthwash and Sl.No.119 mentions Clohex Mouthwash.

(ii) The Judgment of Hon'ble Supreme Court in M/s.ICPA Health Products (P) Ltd. Vs. Commissioner of Central Excise, Vadodara [(2004) 167 ELT 20 (SC)] wherein the Court had considered three drugs Hexiprep, Hexiscrub (Surgiscrub) and Hexiaque which contained the active ingredient "Chlorhexidine Gluconate" had therapeutic properties and hence is a medicine falling under Chapter 30 of Central Excise Tariff Act.

(iii) The Judgment in M/s.B.P.L Pharmaceuticals Ltd. Vs. Collector of Central Excise, Vadodara [1995 (77) ELT 485(SC)]. In the case relating to "Selsun shampoo", in para 29 the Apex Court had pronounced that the definition of drugs and cosmetics given in the Drugs and Cosmetics Act, 1940 is not ignorable while interpreting the entries in Chapters 30 and 33 of the Central Excise Tariff Act.

(iv) The Order No.15/08-09 dtd.05-01-2009 of the Original Adjudicating Authority under the Central Excise Act, Sri.S.P. Rao, Deputy Commissioner, Central Excise, Boisar II Division, Thane II, Maharashtra issued to M/s.Group Pharmaceuticals Ltd., Plot No.W-46(B), MIDC, Tarapur, Thane. This adjudication order has grouped Clohex mouth wash under chapter heading 3003.10 of the Central Excise Tariff Act as it then existed.

(v) Order of CEGAT in Collector of Central Excise, Vadodara Vs. M/s.ICPA Health Products (P) Ltd. reported in 1999 (108) ELT 598 (Tri) classifying the brand Hexidine mouthwash containing the active ingredient Chlorhexidine Gluconate as medicine under Chapter 30, as then existed and not a cosmetic preparation under Chapter 33.

(vi) The copies of Central Excise Sale Invoice issued by Group Pharmaceuticals Ltd. Nos.2013-14/001/WNF/00097 dtd.06-05-2013 regarding Senquel – AD 200 ml, 2013-14/001/WNF/00136 dtd.21-05-2013 regarding Clohex Plus 150 ml and 2013-14/001/WNF/00185 dtd.06-06-2013 relating to sale of Clohex 150 ml to M/s.Dr.Reddy's Lab Ltd., Andhra Pradesh showing the above goods were cleared under Central Excise Tariff 3003.39.00.

9) The above products are manufactured under a Drug License issued under the Drugs and Cosmetics Act.

10) The above judgments of the Hon'ble Supreme Court and Central Excise Tribunal had considered the nature of the active ingredient 'Chlorhexidine Gluconate' in treating the diseases of the mouth, gums and buccal mucosa and has stated that it has therapeutic properties and had classified the same as Medicine falling under Chapter 30 of the Central Excise Tariff Act. The order of the adjudicating authority under Central Excise and the fact that the goods are cleared for sale under Chapter 30 as evidenced from the invoices also fortifies this fact. Also, as per the packing and labels in the retail bottles produced, and the literature, there are no indications that they are used as cosmetics or toilet preparation for general hygiene. Considering the above factors in its totality, it can be safely concluded that the product 'Clohex' and 'Clohex Plus' in the form of mouthwash are Medicines classifiable under Chapter 30 of the Customs Tariff

Act. Since, these items would be medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses put up in measured doses or in forms or packing for retail sale, the same can be classified under the HSN Code 3004.90.99 and hence would be taxable at the rate of 5% by virtue of Entry 36 (8)(h)(vi) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

11) With regard to Senquel AD, the literature in the package provide only for de-sensitising mouthwash. The applicant has not produced any further authority to prove his case that this product is a medicine. Sensitivity cannot be treated as a specific disease condition and any person can use this product for de-sensitising as advertised in the label. The literature produced attributes Senquel AD to have "better penetration due to liquid form and refreshing mint flavour". On 'Potassium Nitrate' it states "on regular use, significantly reduces sensitivity" and on "Sodium Fluoride", it states "carries preventing effect". Thus it is not used to treat any specific disease condition but rather has some prophylactic or therapeutic uses for general dental hygiene. In view of the said facts and also by virtue of Note 1(d) of Chapter 30 of the Customs Tariff Act, Senquel AD Mouthwash would be rightly classifiable under the HSN Code 3306.10.90 of Chapter 33 of the Customs Tariff Act, and hence, would be taxable at the rate of 14.5% by virtue of Entry 92(6) of S.R.O.No.82/2006.

The issues raised above are clarified accordingly.

C. Lalappan	**T.K. Ziavudeen**	**Dr. A. Bijikumari Amma**
Joint Commissioner(A&I)	**Joint Commissioner(General)**	**Joint Commissioner (Law)**

To

Sri.P.R. Venkatesh,
Advocate,
M/s.SVS Ayyar Associates,
CL Anand Lane, M.G. Road,
Ernakulam,
Kochi – 682011.

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, KERALA
THIRUVANANTHAPURAM.

PRESENT : M.GIREES KUMAR, I.A.S.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of Scented arecanut - Orders issued.

Read : 1. Order No. C3/27520/08/CT dtd. 30/11/2012 of the Authority for Clarification U/s 94 of the Kerala Value Added Tax Act, 2003.
2. Judgment of the Hon'ble High Court of Kerala in OTA Nos. 2& 4 of 2013 & WP(C) No. 6055 of 2013 dtd. 3/9/2013.
3. Letter from Adv. S. Anil Kumar dtd. 18/1/2014.
4. This Office letters of even No. dtd. 6/2/2014.
5. Application from M/s. Soumya Agencies, Kollam dtd. 14/2/2014.
6. This Office Notice of even No. dtd. 1/3/2014.
7. This Office Notice of even No. dtd. 11/8/2014.
8. Adjournment request from M/s Azam Laminators (P) Ltd., dtd. 18/8/2014.
9. This Office Notice of even No. dtd. 29/8/2014.

ORDER No.C3/7632/13/CT DATED 3/3/2015.

1. History of the Case.

(a) As per the clarification Orders C3-25772/07/CT dated 14/1/2008 and Order No.C3-53291/06/CT dated 23/7/2007, it was clarified that powdered / ground (betel) arecanut added with small quantities of edible oil or sugar, glucose, saccharine, menthol, flavor etc. would fall under HSN Code 2106.90.30 of the Customs Tariff Act. Consequently, since this HSN code was not found in any of the Schedules to the Kerala Value Added Tax Act, 2003, it was clarified to be taxable at 12.5% by virtue of Entry 75(2) of S.R.O.No.82/2006.

(b) The above said clarifications were re-examined by the Authority for Clarification as directed by the Hon'ble High Court of Kerala in Order No.OTA No.7/2008 and WP(C) No. 25215 of 2007(B) dated 1st day of June, 2008, vide clarification Order No.C3/27520/08/CT dated 30/11/2012. Adverting to the judgment of the Hon'ble Supreme Court in **M/s. Reckitt Benckiser (India) Ltd. Vs. Commissioner of Commercial Taxes, Kerala [2008 (2) KLT 604 – SC] and M/s. Crane Betel Nut Powder Works reported in [(2007) 4 SCC 155; 2007 (210) E.L.T 171 (SC)]**, it was clarified that the HSN Code applicable to the product was 0802.90 and not 2106.90.30.

(c) With regard to the further grouping of this commodity in the eight digit HSN code, the Authority, found that the commodity scented betel nut / arecanut sold by M/s. Azam Laminators (P) Limited, Pudukkottai is not powder or fine particles but sufficiently larger pieces which could be classified as split portions of arecanut. They have also relied on the order of Central Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Commissioner of Central Excise and Customs, Guntur Vs. Crane Betel Nut Powder

Works 2008(221) ELT 99 (Tri-Bang) to arrive at the conclusion that, the same would be classifiable under HSN Code 0802.90.12. Since, this HSN Code does not find any place in the Schedules to the Kerala Value Added Tax Act, 2003 the item was classified under Entry 103 of S.R.O. No.82/2006 taxable at 13.5%.

2. Aggrieved by the above said order M/s. N.V.K Muhammed Sulthan Rawther & Sons filed OTA 2/2013, Sri. A.R. Safiullah, Managing Director, M/s. Azam Laminators (P) Ltd., Pudukkottai filed OTA 4/2013, and Sri. A.R. Safiullah, Proprietor, M/s. S.A. Safiullah & Co., Pudukkotai filed WP (C) No. 6055/2013(F) before the Hon'ble High Court of Kerala. Hon'ble Court vide the common judgment read as paper 2nd above set aside the clarification order as it found that no proper opportunity of hearing was granted and had directed the parties therein to mark appearance in the Office of the competent Authority for Clarification at 10.30AM on 18/1/2014. The Court also directed that '***the authority will then proceed to take further steps for appropriate compliance of the requirements under Section 94 of the KVAT Act and decide on the issue after hearing the necessary parties and adverting to all necessary issues, including the relevant aspect of the products and such other questions as may be necessary for just and complete decision at that time'.*** So the matter was required to be decided afresh.

3. Adv. S. Anil Kumar, the authorized representative of Sri. A.R. Safiullah, Managing Director, M/s. Azam Laminators (P) Ltd., Pudukkottai appeared and produced a copy of the judgment on 18/1/2014 vide letter read as paper 3rd above.

4. Since some of the appellants failed to comply with the direction of the Hon'ble Court, a letter was issued to them vide letters read as paper 4th above, wherein it was informed that ***'you have not complied with the direction contained in the judgment. However, in view of the direction of the Hon'ble High Court that the requirements of Section 94 of the Kerala Value Added Tax Act are to be complied with, you are requested to submit an application for clarification U/s 94 of the Act read with Rule 78 of the Rules made there under within 7 days from the date of receipt of this letter, failing which the Authority would be constrained to finalize the proceedings in your absence'.***

5. Accordingly, M/s. Soumya Agencies, Kollam filed an application U/s 94 of the Act vide paper 5th above.

6. Subsequently, as directed by the Hon'ble Court all necessary parties were heard by the Authority for Clarification U/s 94 of the Act on 12/3/2014. They had also produced the sample products. While two of the members of the Authority for Clarification were of the opinion that the product would be classifiable under HSN Code 0802.90.12 and is taxable at the rate of 13.5%, one member expressed the opinion that since the meaning of ground and powder are one and the same, the product would be classifiable under HSN code 0802.90.13, taxable at 5%. The Authority could not arrive at a unanimous decision and the matter was referred to the Commissioner as envisaged in sub-section (6) of Section 94 of the Act.

7. Accordingly, the matter was placed before me. The parties/authorized representatives, Senior Counsels Smt. Nalini Chidambaram, Sri. V.V. Asokan, Sri S. Anil Kumar were again heard in detail on 12/9/2014 and the contentions raised in the matter have been examined.

8. I agree with the finding of this Authority for Clarification and the earlier Authority that the decision in the Crane Betel Nut case **(M/s. Crane Betel Nut Powder Works reported in [(2007) 4 SCC 155; 2007 (210) E.L.T 171 (SC)])** is applicable to this product and this product would fall under Chapter 8 of the Customs Tariff Act with the six digit HSN code 0802.90.

9. Then, the only question to be decided by me is whether this product would fall under the HSN Code 0802.90.12 or 0802.90.13. The Authority for Clarification, among other factors, had relied on order of Central Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in **Commissioner of Central Excise and Customs, Guntur vs. Crane Betel Nut Powder Works 2008(221) ELT 99 (Tri-Bang)**.

In this regard, the finding of the earlier Authority is reproduced below:

In paras 14 and 15:

"14. Subsequently, in Commissioner Vs. Crane Betel Nuts Powder Works - 2008 [221] ELT 1999 Tribunal, Bangalore, The Central Excise Tribunal held citing the Supreme Court case Crushing of Betel Nut into smaller pieces, sweetened with sweetening agents, essential / non- essential oils and menthol and is classifiable under Tariff item 0802.90.12 of Central Excise Tariff Act. It was also held that, the introduction of 8 digit HSN classification in Central Excise Tariff does not have any consequences or bearing on the case and upheld the order of the Commissioner (Appeals). It was held that Supreme Court decision is clear on the aspect that, in para 17 of the said judgment, after detailed consideration of the submissions made therein has held that the end product "betel nut remains a betel nut" and there is no change in the end product.

15. Hence, as far as Central Excise Tariff is concerned, the product belongs to HSN code 0802.90.12. The four digit HSN 0802 and Entries under it in Chapter 8 of Central Excise Tariff Act, exactly corresponds to the four digit HSN 0802 and Entries under it in Chapter 8 of Customs Tariff Act. The notes to the Chapters are also the same."

And, subsequently in para 17,

"17. The CESTAT tribunal, in decisions cited supra while deciding whether the adoption of eight digit classification in Central Excise Tariff has made any difference in the ratio pronounced by Hon'ble Supreme Court Judgment in 'crane betel nut powder case' found the issue in the negative. In that case, the Tribunal upheld the classification made by the lower authority i.e., HSN 0802.90.12….. Split."

To this, the applicants have contended that the decision of the CESTAT in **Commissioner of Excise & Customs, Guntur Vs. Crane Betel Nut Powder Works [2008 (221) E.L.T. 99 (Trl. Bang.)** does not change the position of law laid down by the Apex Court. In the said case what was held was that the product of M/s. Crane Betel Nut Powder Works fall under Tariff Entry 08029012, in that case the claim of the respondent relates to arecanut pieces and not in respect of arecanut powder or ground arecanut. I have examined the Judgment. The judgment is not conclusive, in deciding the facts in issue, i.e., whether the product is split or ground or in powder form.

10. I have examined the entries in the Customs Tariff Act and the Third Schedule to the Kerala Value Added Tax Act, 2003. The relevant entries in Chapter 8 of Customs Tariff Act are:

0802	***OTHER NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLED OR PEELED***
	- Almonds:
0802 11 00	*-- In shell*
0802 12 00	*-- Shelled*
	- Hazelnuts or filberts (Corylus spp.):

0802 21 00	*-- In shell*
0802 22 00	*-- Shelled*
	- Walnuts:
0802 31 00	*-- In shell*
0802 32 00	*-- Shelled*
0802 40 00	*- Chestnuts (Castanea spp.)*
0802 50 00	*- Pistachios*
0802 60 00	*- Macadamia nuts*
0802 90	*- Other:*
	--- Betel nuts:
0802 90 11	*---- Whole*
0802 90 12	*---- Split*
0802 90 13	*---- Ground*
0802 90 19	*---- Other*
0802 90 90	*--- Other*

The relevant entries in the Third Schedule to the Kerala Value Added Tax Act, 2003 are as under:

2	***Arecanut powder and arecanut***	
(1)	Arecanut powder	0802.90.13
(2)	Arecanut	0802.90.11

Hence, it can be seen that while the description in the Customs Tariff Act for HSN Code 0802.90.13 is 'Ground', the description of the same HSN Code in the Kerala Value Added Tax Act, 2003 is 'Arecanut powder'. By virtue of the Rules of Interpretation appended to the Schedules to the Kerala Value Added Tax Act, those commodities with HSN number should be given the same meaning as given in Customs Tariff Act, 1975. Hence, I am inclined to proceed to examine the commodity in the light of the word used in Customs Tariff Act, i.e., 'Ground'.

11. Basically the issue to be decided boils down to the size of the product. According to the petitioners, there is no arecanut powder like talcum powder available in the market. Also, there is no commercial value for fine arecanut powder, if any manufactured. The product usually sold is one of ground form, which is produced through the process of grinding using particular machines. By arranging the width of the jaw size of the machine, arecanut in grounded form of different sizes can be made.

The raw material for making the impugned product is arecanut, split into two. They have also produced samples of the same.

They have also produced copies of their Shipping Bill for Export, Tuticorin Port relating **to 'Nizam Betel Nut – 500 bags of 40 packets and each packet containing 50,00,000 pouches'** and has classified this item under HSN Code 0802.90.13. This has been accepted by the Customs Authorities.

The sample of the impugned commodity was produced by the applicant; they have also produced the commodity in retail packets which are commonly sold in the market. On visual examination, the arecanut pieces are found to be in granular form like 3 to 5 mm sand particles with little bit of powder residue, and definitely not in uniform fine particles. This size also cannot be called 'split', which, as understood in general parlance means a whole arecanut divided into say, defined sizes of arecanut pieces.

12. In view of the facts stated supra, it is clarified that this product can only be classified as 'Ground arecanut' which is classifiable under the HSN Code 0802.90.13 and consequently under Entry 2(1) of the Third Schedule to the Kerala Value Added Tax Act, 2003, taxable at the rate of 5%.

COMMISSIONER

To

1. Sri. A.C. Shivaraj,
   Partner,
   M/s. Soumya Agencies,
   M.G. Street, Thamarakulam Road,
   Kollam – 691 001.

2. Sri. A. R. Safiullah,
   M/s. S.A. Safiullah & Co.,
   Kannamedu,
   Kozhinjampara. P.O.,
   Palakkad.

3. Sri. A. R. Safiullah,
   Managing Director,
   M/s. Azam Laminators Pvt. Ltd.,
   Raja Gopalapuram Main Street,
   Pudukkottai – 622 001.

4. M/s. The Betel Nut Manufacturers Association,
   T.S. No. 9610, Rajagopalapuram Main Road
   Pudukkotai – 622 003
   Tamil Nadu.

5. Sri. K.V. Wilson,
   M/s. Roja Agencies,
   City Centre Building,
   Calicut Road, Kunnamkulam – 680 503.

6. M/s. S. Anil Kumar, K.S. Hariharan & K. Uma Maheswar,
   Advocates,
   Haridev Buildings, Old Railway Station Road,
   Kochi – 682 018.

7. M/s. Iyer & Iyer,
   Advocates,
   Rajaji Road, Kochi – 682 035.

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

2. T.K. Ziavudeen
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 Kera Picker and Wonder Climber – Orders issued.

Read : Application from M/s. Praka Tech, Mayanad, Kozhikode dtd. 7/11/2012.

ORDER No.C3/35830/12/CT DATED 7/4/2015.

1. M/s. Praka Tech, Mayanad, Kozhikode has preferred an application U/s 94 of the Kerala Value Added Tax act, 2003 seeking clarification on the rate of tax of Kera Picker and Wonder Climber.

2. The applicant has developed a new type coconut picking machine named ‘Kera Picker’ and arecanut picking machine named ‘Wonder Climber’. These machines are intended to pluck coconuts and arecanuts without climbing on the trees. They are operated by fixing it on trees. One can pluck coconuts and arecanuts by pulling the controlling ropes hanging from the machine by standing on the ground. It is manually operated and no fuel or electricity is required to operate it. The applicant would contend that it can be classified as an manually operated agricultural implement falling under the First Schedule to the Act. The applicant has requested to clarify the rate of tax of the commodities.

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

4. A video presentation on the working of the products was made by the authorised representative on behalf of the applicant during the course of the hearing. An examination of the written submission made by the applicant and the video presentation on the working of the impugned products would show that

they are agricultural implements which are manually operated. As such it is clarified that the commodities 'Kera Picker' and 'Wonder Climber' would be exempt from tax by virtue of Entry 1(8) of the First Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

C. Lalappan	T.K. Ziavudeen	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

Sri. Prakasan Thattari,
Nambiary House,
P.O. Mayanad,
Kozhikode – 673 008.

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

2. T.K. Ziavudeen
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 Aluminium profiles used for Door Bottom, Door top, Verticals, etc. – Orders issued.
Read : Application from Aluminium Dealers Forum, Ernakulam dtd. Nil.

ORDER No.C3/19325/14/CT DATED 22/4/2015.

1. Aluminium Dealers Forum, Ernakulam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the following commodities:

Aluminium profiles hollow and other than hollow:-

a) that can be used for making doors, their frames and partitions
b) that can be used for making windows and their frames
c) that can be used for making showcase, kitchen cabinets etc.

2. The applicant would contend that aluminium profiles come in thousands of different shapes and sizes. They are manufactured using the extrusion process. Extrusion is a process that allows great flexibility in shape and thickness by using different dyes. Thus aluminium manufacturers can produce different profiles on the same extrusion press using different dyes. Profiles here mean long aluminium articles whose cross section remains the same throughout its length. Rods, tubes, pipes, channels of different shapes can be extruded. It makes aluminium extrusions so versatile and gives it an edge over other metals. However the limitation is that they come in long and straight pieces. Most commonly, they come in 3.66 mtrs length. They need to be cut and fabricated by skilled workers before putting to any end use.

3. The applicant would contend that their members are selling Hollow Profiles, Pipes and Tubes and Profiles other than Hollow. The HSN Codes of these items are:

Aluminium Extruded Hollow Profiles	7604.21.00
Aluminium Extruded Profiles other than Hollow	7604.29.90
Aluminium Extruded Pipes & Tubes	7608.20.00

The suppliers of these materials are all mentioning the above HSN code and are paying the Excise Duty as per the said HSN code only.

4. The applicant would submit that wholesalers and retailers bill these items in their common trade names like 50 mm x 25 mm rectangle, glazing clip, door bottom, kitchen cabinet section, shutter plain etc. This is done so that they can be easily identified by them as well as by their customers. These goods are meant to be used as aluminium profiles but are called or referred by their trade name. The generic name is not used as it may not be easily understood by the public at large. For example, door bottom is the trade name of an Aluminium Hollow Profile with HSN code 7604.21.00. It gets its name from the fact that it can be used along with many other sections to make doors.

5. The applicant has referred Entry 29 of S.R.O.No.82/2006 and would contend that:

(i) *Door Bottom / top / divider / vertical are not doors. However they can be used to make doors. To make a door one needs different aluminium sections like door bottom, door top, door divider, door vertical and glazing clip along with other accessories like screws, hinges, bolts, nuts, glass, board, handles and lock. Moreover one needs the labour of a skilful fabricator to cut and fix all the above together. There is no dispute here about the rate of tax of doors, which is clearly 14.5%. What needs to be clarified is that aluminium profiles (hollow or otherwise) with HSN 7604 and 7608 are different from Aluminium doors with HSN 7610.10.00. Just as a door mat is different from door, door bottom is also different from door.*

(ii) *Similarly the S.R.O. mentions "Door / window frames and thresholds for doors". A "Door frame" is defined in the oxford dictionary as follows:*

Noun: the frame in a doorway into which a door is fitted.

In Malayalam it will be called 'Katla'. Door frames will cover three sides of a door way and window frames cover all four sides of a window. Here too, the above mentioned sections which are long and straight (always sold in 3.6 mtrs length) cannot be called door frames. Similarly thresholds for doors are always made of wood or stone. They are never made of metals.

6. The applicant has requested to clarify the rate of tax of the commodities stated supra.

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

8. Entry 3(1) of the Third Schedule to the Kerala Value Added Tax Act, 2003 takes within its ambit ***Articles and other utensils of aluminium.*** As such, it is hereby clarified that Aluminium profiles classified under the HSN Codes 7604 to 7608 and those falling under the HSN Code 7610.90 would be taxable at the rate of 5% by virtue of Entry 3(1)(a) to (e) of the Third Schedule to the Kerala Value Added Tax Act, 2003, when sold as such, irrespective of the market parlance the traders assign to them.

The issues raised above are clarified accordingly.

C. Lalappan	**T.K. Ziavudeen**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

Sri. P. Santharam Shenoy,
Partner,
M/s. Nayar & Menon, Chartered Accountants,
First Floor, Mubarak Complex,
Opp. Lisie Hospital, Kochi – 682 018.

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 (General),
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. 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 Nylon Monofilament line falling under HSN 5404 – Orders issued.

Read : Application from M/s. Covema Filaments Ltd., Kakkanad, Kochi dtd. 5/12/2013.

ORDER No.C3/35808/13/CT DATED 23/4/2015.

1. M/s. Covema Filaments Ltd., Kakkanad, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of nylon monofilament fishing line.

2. The applicant is borne on the rolls of the Office of the Assistant Commissioner (Assessment), Special Circle – III, Ernakulam having its manufacturing unit at 14B, Cochin Special Economic Zone, Kakkanad and is engaged in the manufacture and sale of 'Nylon Monofilament Fishing Line'. The company imports raw materials such as nylon chips, from overseas and manufactures the commodity.

3. The applicant would contend that Nylon Monofilament Fishing Line is made from a single fibre of nylon. Most fishing lines are now monofilament and are produced in a range of diameters which have different tensile strength. Imported nylon chips are fed into extruder with colour and heat is applied to the extruder for melting and mixing of the colour and in melted stage the nylon chips with colour added is extruded through tiny holes. It is then passed through water tank for cooling and the final produce is obtained. Thereafter the same is wound on the spools, packed and sold.

4. The applicant would contend that fishing tackles means apparatus for fishing and includes any equipment or gear used for fishing which is exempt from tax. The applicant would contend that Nylon Monofilament Fishing Line attracts HSN Code of 5607.50.10, falling under Entry 18(3) of the First Schedule, and is used solely for the purpose of fishing. As such Nylon Monofilament Fishing Line shall also be exempt. The applicant has requested to clarify the rate of tax of the commodity.

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

6. Entry 18(3) of the First Schedule relied on by the applicant takes within its ambit only *Nylon fish net twine* falling under the HSN Code *5607.50.10*. But the commodity under consideration is apparently different from Nylon fish net twine in commercial parlance. Hence it can safely be concluded that the impugned commodity would not fall under the above said entry.

7. The applicant has produced the sample of the impugned commodity before this Authority. An examination of the product and the manufacturing process of the same stated supra would show that, though stated to be 'nylon monofilament fishing line', the impugned product is essentially a 'monofilament of nylon' which can be used for varied purposes. Monofilament of nylon is aptly classified under the HSN Group 5404 of the Customs Tariff Act.

8. The HSN 5404 does not figure 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 the commodity 'monofilament of nylon'. As such it is clarified that the impugned commodity viz. 'monofilament of nylon' would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (General)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. P.N.D. Namboothiri,
Advocate,
Ernakulam Road, Aluva,
PIN - 683 101.

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

2. T.K. Ziavudeen.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

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

Sub : KVAT Act, 2003 – Clarification U/s 94 – Taking over of a proprietorship concern by a Company and the eligibility to pay tax under Section 8(f)of the Act – Orders issued.

Read : Application from M/s. CDB 24 Carat International Jewellers Pvt. Ltd., Kozhikode dtd. 12/9/2014.

ORDER No.C3/28316/14/CT DATED 23/4/2015.

1. M/s. CDB 24 Carat International Jewellers Pvt. Ltd., Kozhikode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the takeover of a proprietorship concern by a Company and the eligibility to pay tax under Section 8(f) of the Kerala Value Added Tax Act, 2003.

2. The applicant has been paying compounded tax U/s 8 of the Act for the last five years. The applicant proposes to take over another proprietorship business having several branches, all of which have been paying compounded tax for more than two years, as a going concern. Since the proprietorship branches are taken over by the Private Limited Company as a going concern, the former will no more be in existence. But for the change in constitution, both businesses had continued under the compounding scheme for more than two years.

3. The applicant placing his reliance on clause (f) of Section 8 of the Kerala Value Added Tax Act, 2003 would contend that *Explanation 1* of clause (f) denies permission to a dealer to opt for payment of tax under this clause only if he had not conducted business up to a full year as on the first day of April of the year to which the option relates. The applicant, as well as the proprietorship business proposed to be taken over, have been paying compounded tax under Section 8

of the Act for more than two years. So Explanation 1 of Clause (f) will not have any application to the applicant when it takes over the proprietorship concern. Since both businesses had paid tax U/s 8 for more than two previous years, there will not be any problem to apply Explanation 2 therein.

4. The applicant contends that as such, he will be eligible to opt for payment of compounded tax under Section 8 even after it takes over the proprietorship business and has requested to clarify the issue.

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

6. Taking over the branches of a proprietary concern by a Private Limited Company would amount to starting of new branches by the Private Limited Company, since the proprietorship concern cease to exist. Hence such branches can only be treated as new branches started by the Company during the current year. As such, as per the existing compounding provision, they cannot pay tax at compounded rates for the first financial year.

The issues raised above are clarified accordingly.

C. Lalappan	T.K. Ziavudeen	Dr. A. Bijikumari Amma
Joint Commissioner(A&I)	**Joint Commissioner(General)**	**Joint Commissioner (Law)**

To

M/s. S. Anil Kumar, K.S.Hariharan & K. Umamaheswar,
Advocates
Haridev Buildings
Old Railway Station Road, Kochi - 682018

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

2. T.K. Ziavudeen.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

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

Sub : KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of flex – Orders issued.
Read : Application from M/s. Akbar Publicity, Kollam dtd. 19/11/2014.

ORDER No.C3/35119/14/CT DATED 23/4/2015.

1. M/s. Akbar Publicity, Kollam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of flex.

2. The applicant is a registered dealer borne on the rolls of the Office of the Commercial Tax Officer (Works Contract), Kollam. The applicant started flex printing work from May, 2012 onwards and had taken out registration under works contract. The applicant prior to the starting of said business was running a publicity agency in the same name of Akbar Publicity in the same premises. The nature of business involved in this business was only labour contract work. No material transaction as deemed sale was involved in this business and as such it was not at all liable to be got registered under the Kerala Value Added Tax Act.

3. The Intelligence Officer (Investigation Branch) – II, Kollam visited the place of business of the applicant and seized certain records on 13/9/2012. A notice for production of accounts was served on the petitioner. Subsequently the Intelligence Officer issued a notice U/s.67(1) of the Act proposing a penalty equivalent to double the amount of tax sought to be evaded during the years 2009-10, 2011-12 and 2012-13, assessing tax due at 12.5% and CESS for the first two years and tax due at 12.5% for the financial year 2012-13 i.e., the third year.

4. The applicant would contend that as per Section 6(1)(e) of the Kerala Value Added Tax Act, the rate applicable to the transfer of goods involved in the execution of works contract, where the transfer is in the form of goods, is at the rate specified for such goods. In the instant case, even if it is treated as transfer executed in the form of works contract, it is a distinct product named as printed article incorporated in item (5) to Serial No. 100 of Third Schedule as ***Other printed matter, including printed pictures and photographs*** chargeable only at 4% upto 2011-12 and at 5% from 2013-14 onwards.

5. The applicant has relied on the judgments of the Hon'ble Supreme Court of India in Rainbow Colour Lab Vs. State of Madhya Pradesh dated 2/2/2000, State of Karnataka Vs. Pro Lab & Ors. dated 30/1/2015 and the Clarification Order No. C7-55663/05/CT dated 25/9/2006 to support his contentions.

6. The applicant has requested to clarify the rate of tax of the commodity flex.

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

8. The decision in Rainbow Colour Lab Case and the latest Supreme Court judgment in State of Karnataka Vs. Pro Lab & Ors. relates to printing and photography *vis-a-vis* works contract.

9. But in the Kerala Value Added Tax Act scenario, there are specific entries in the Schedule with respect to printed materials, photographs etc. taxable at the appropriate on sale value. As such, it is clarified that printed material including flex would be taxable at the rate of 5% by virtue of Entry 100 of the Third Schedule to the Kerala Value Added Tax Act, 2003 upto 31/3/2015 (Printed banners, hoardings and leaflets of Poly Vinyl Chloride/Polyethylene and other plastic sheets would be taxable at the rate of 20% by virtue of clause (a) of sub-section 1 of Section 6, w.e.f. 1/4/2015).

The issues raised above are clarified accordingly.

C. Lalappan	**T.K. Ziavudeen**	**Dr. A. Bijikumari Amma**
Joint Commissioner(A&I)	**Joint Commissioner(General)**	**Joint Commissioner (Law)**

To

Sri. A.R. Vijayabhanu,
Desinganad Tax Consultancy,
Residency Road, Bapuji Junction,
Asramam, Kollam – 691 002.

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

2. T.K. Ziavudeen.
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 – Joint Venture Company, bunker sale and tax liability – Orders issued.
Read : Application from M/s. Bharat Petroleum Corporation Ltd., Southern Region, Chennai dtd. 2/4/2014.

ORDER No.C3/13454/14/CT DATED 28/4/2015.

1. M/s. Bharat Petroleum Corporation Ltd., Southern Region, Chennai has preferred an application U/s 94 of the Kerala Value Added Act, 2003 seeking clarification on the tax liability on bunker sale to foreign going vessels through a joint venture company formed between M/s. Bharat Petroleum Corporation Ltd., and M/s. Matrix Bharat Pte.

2. The applicant has informed that one of their international bunkering agents, M/s. Matrix Bharat Pte. has proposed taking out registration under the Kerala Value Added Tax Act. As per the proposal, M/s. Matrix Bharat Pte. shall get registered in Kerala and purchase product for bunkering supplies from BPCL and in turn shall sell it to foreign going vessels for international bunkering.

3. The applicant has referred sixth proviso to Section 6(1) and Rule 12C(4). The applicant would contend that M/s. Matrix Bharat Pte. is proposing to purchase products from them at the concessional VAT rate of .5%, store it in their Custom Bonded Warehouses and subsequently sell it to foreign going vessels. M/s. Matrix Bharat Pte. is proposing to charge .5% VAT on the ultimate sale made by them to foreign going vessels and will raise separate vatable invoices.

4. The applicant has requested to clarify the following:

i. Whether sale of bunkering fuel by BPCL to M/s. Matrix Bharat Pte. is eligible for concessional rate of .5% ? Will they be treated as agents as per the Act.
ii. Will Matrix be eligible to take credit of VAT paid on purchases?
iii. Documents to be collected by BPCL in the first scenario stated above.
iv. The eligibility for concessional rate with respect to products under the VAT and KGST Acts i.e. furnace oil, lubricants, high flash diesel oil and diesel.

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

6. The applicant has produced copy of the Joint Venture Company Agreement between themselves and M/s. Matrix Marine Fuels LP, before this Authority. The agreement has been perused, and the points (i) to (iv) stated supra are clarified as follows:

(i). As per the terms of the Joint Venture Company Agreement between M/s. Bharat Petroleum Corporation Ltd. and M/s. Matrix Marine Fuels LP, it can safely be concluded that M/s. Matrix Marine Fuels LP does not acquire the character of an agent and hence the sale of bunkering fuel by the applicant to M/s. Matrix Bharat Pte. would not be eligible for concessional rate.

(ii). If M/s. Matrix Marine Fuels LP, takes out registration under the Kerala Value Added Tax Act, 2003 and purchases furnace oil from M/s. Bharat Petroleum Corporation Ltd. in Form No. 8 Bill, and then effect sale within the customs frontier, they will be eligible for Input Tax Credit.

(iii). The issue raised do not fall within the ambit of Section 94 of the Kerala Value Added Tax Act, 2003 and hence is hereby declined.

(iv). Concessional rate of .5% would be applicable to the sale of fuel and lubricants to foreign-going vessels other than fishing vessels, for the supply of bunker under sixth proviso to sub-section (1) of section 6 of the Kerala Value Added Tax Act, 2003 subject to the conditions laid down in S.R.O. No. 635/2012. The rate of tax of the commodities falling under the Kerala General Sales Tax Act, 1963 viz. High-Flash High Speed Diesel Oil and Diesel is not clarifiable, as the issue raised will not come within the ambit of Section 94 of the Kerala Value Added Tax Act, 2003 and hence is hereby declined.

C. Lalappan	T.K. Ziavudeen	V.J.Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

Sri. D. Hemanth Kumar,
Assistant Manager, Finance – SS, South,
M/s. Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
Off. 11th Main Road, Anna Nagar,
Chennai – 600 040.

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

2. T.K. Ziavudeen
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 – Supplying and fixing of auditorium chairs to the theatres belonging to M/s. KSFDC and tax liability – Orders issued.

Read : Application from M/s. Innovative Seatings (P) Ltd., Vadodara dtd. 15/12/2014.

ORDER No.C3/38881/14/CT DATED 30/4/2015.

1. M/s. Innovative Seatings (P) Ltd., Vadodara has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the tax liability on supply and fixing of auditorium chairs to the theatres belonging to M/s. KSFDC.

2. The applicant is a dealer situated in the State of Gujarat bearing TIN 24191201857 under Gujarat Value Added Tax Act and CST No.24691201857 under the CST Act, 1956.

3. The applicant contend that M/s. Kerala State Film Development Corporation Ltd., Thiruvananthapuram (KSFDC), had invited sealed tenders for supply and fixing of auditorium chairs in the theatres belonging to them at Thiruvananthapuram, Kozhikode and Alappuzha and the applicant placed their tender on 14/8/2012 which was accepted. After discussions and negotiations, the work was awarded to the applicant as per agreement executed between them and KSFDC. As a result of this contract, the applicant sold and supplied

auditorium chairs from their business place at Vadodara to Kerala for execution of the works contract, raising sale bills favouring KSFDC, paying CST at the higher rate in Gujarat, and fixed the chairs in the theatres at Thiruvananthapuram, Kozhikode and Alappuzha. In the agreement of works contract, a general provision for TDS was included as clause 5(f) as under:-

> *"Sales Tax on works (Work Contract) shall be deducted at 3% of the gross payment at present for contractors having KGST registration. For those contractors without KGST registration, the deduction for work contract tax shall be as per KGST registration.*
> *Any tax omitted to be deducted in any part bill shall be deducted in the subsequent bills / final bill".*

At the time of payment of the contract amount, the applicant had represented before the awarders that they are only executing interstate works contract and are not liable to pay any sales tax in the State of Kerala and as such no TDS be effected. The awarders (KSFDC), had thereupon sent a letter dtd. 25/4/2014 to the Inspecting Assistant Commissioner (IB), Kottayam, intimating the claim of interstate transaction put forth by the applicant and therefore to advise as to at which rate TDS to be effected. The Inspecting Assistant Commissioner (IB), Kottayam vide his letter dtd. 3/6/2014, informed the awarders to deduct tax at source at the rate of 10% for the reasons that the contract related to future goods and appropriation of goods took place in Kerala and therefore the awarder was liable to effect TDS at the rate of 10%. The applicant had again on 18/7/2014 addressed the awarders to abstain from effecting any TDS on the interstate transaction as it would be violative of settled law declared by Hon'ble High Courts and Supreme Court. Despite all the efforts from the part of the applicants, the awarders had effected TDS at the rate of 10% and remitted the same to Commercial Tax Officer (Works Contract), Thiruvananthapuram.

4. The applicant would contend that the fact that there existed a privity of contract in between the applicant company in Gujarat who is a dealer in auditorium chairs, registered under the CST Act, 1956 and the awarder, KSFDC, Kerala and that the movement of goods from the State of Gujarat had occasioned as a result of this contract is not under dispute. There is no intermediary appearing in between the two parties, and the applicant had paid CST at the appropriate rate in the State of Gujarat which is also unassailable. The sale of goods from Gujarat and the movement of goods from Gujarat to Kerala are integral part of the same transaction and there is direct nexus between the sale and the movement of goods from one State to another, are all irrefutable facts. In other words, the movement is incident of and was necessitated by the

contract of sale (works contract) in between the applicant and KSFDC and thus inextricably linked with the sale of goods taken place at Gujarat. There is undoubtedly a conceivable link between the inter-state seller and the ultimate purchaser.

Thus all the three essential requirements necessary for an interstate sale, namely:-

(i) there must be a sale,
(ii) the goods must actually be moved from one State to another,
(iii) the sale and movement of such goods must be part of the same transaction are all satisfied in this case.

5. The applicant would contend that the movement of goods from Gujarat to Kerala was occasioned by the sale of auditorium chairs by the applicant to KSFDC or by the purchase of KSFDC from the applicant whichever way one looked at it. The movement to Kerala was an incident of and was inextricably connected with the purchase / sale. The purchase and transport were part of one transaction and there was no break. The appropriation of goods had taken place at Gujarat when the goods were sent apart for transport to Kerala. It is immaterial that the accretion or addition of goods in the execution of works contract had taken place at the theatres owned by KSFDC in Kerala. So long as the movement of goods was an incident of the sale / purchase, it amounts to an interstate sale. It is also not necessary that the contract of sale had to expressly provide for the movement of goods. It is sufficient if the movement of goods was implicit in the sale. The applicant would contend that the situation is well settled and it was reiterated by the Apex Court in (1993) 90 STC 1 (SC) – Co-operative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu.

6. The applicant would contend that the reasoning of the Inspecting Assistant Commissioner (IB), Kottayam that the appropriation of goods took place at Kerala and hence it is a local sale at Kerala is legally and factually incorrect. It is also incorrect to say that the contract for supply of auditorium chairs and its erection was a contract of sale for future or unascertained goods. On the contrary the agreement was for supply of specific goods as defined under Section 2(14) of the Sale of Goods Act, 1930, namely a particular number of auditorium chairs of identified quality and for its erection at specified places.

7. The applicant would contend that the Inspecting Assistant Commissioner (IB), Kottayam is of the view that appropriation of goods takes place only when the chairs are erected in the floor of the theatre and in such cases the sale can only be a local sale at Kerala. If this view is accepted, there

cannot exist a concept which can be termed as interstate works contract at any event. The chairs had started its movement from Gujarat under cover of invoices raised in favour of the KSFDC and crossed the check posts under that status. As per Section 23(2) of the Sale of Goods Act, the divestment of property in goods and the sale is concluded with reference to the seller when the goods are delivered to the carriers for transit to the purchaser's destination and therefore appropriation of goods had taken place at Gujarat.

8. The applicant would further contend that to quote "Benjamine on Sale" (Page 336 – Eighth edition), *"with respect to delivery to a carrier, in 1803, in the case of Dutton Vs. Solomon Son, it was treated as already settled law that where a seller deliver goods to a carrier by order of the purchaser, the appropriation is determined, the delivery to the carrier is a delivery to the buyer, and the property vests immediately. And where the intention finally to appropriate the goods is clear, and the carrier assents, it is immaterial by what documents the consignments is effected".* Therefore the finding of the Inspecting Assistant Commissioner (IB), Kottayam that appropriation of goods had taken place only in Kerala is not correct.

9. The applicant would further contend that the law by the extended definition of Sale, what is being taxed is the materials in goods transferred in the execution of works contract and when those materials move from another State as a result of a prior contract of deemed sale, the authority to tax it, as per the Central enactment, rests solely on the State from which the movement occasions, and that aspect should have been taken care of by Kerala Commercial Tax authorities. The legislative history of the Central Law of the CST Act, 1956 throws light that it was legislated to avoid multiple taxation on a single transaction by two different States in the Union. If the view of the Inspecting Assistant Commissioner is endorsed, it would no doubt defeat the purpose of the central legislation in the case of all works contracts in which the parties to contracts are placed in two different States and the goods pursuant to the contract occasions movement from one State to another for use in execution of work in the other State. In the present case, the applicant has paid CST at Gujarat, as they have sold goods to Kerala under a prior contract and the goods have occasioned movement from the State of Gujarat. This act of the applicant in paying CST in Gujarat is justified as per Section 3, 4 and 6 of the CST Act, 1956. The authorities ought to have found that deemed sale makes no difference with that of other types of sales and once when the goods move from another State as a result of deemed sale, that also is an inter-state sale and the State which is competent to levy tax is the State from which the goods occasion the movement.

The law applicable was discussed by the Hon'ble Court of Gauhati in 82 STC 89 (Gauhati) in Projects and Services Centre Vs. State of Tripura wherein it was held that *the actual use of goods in works contract made in Tripura or the property in the materials passed in Tripura do not affect the nature of sale and the movement of the goods from other State to Tripura being occasioned by a contract for use in execution of the work, it is an interstate sale and the works contractor was not liable to any tax under the Tripura Act, as it is only an interstate works contract guided by Sec.3 of the CST Act, 1956.*

10. The applicant would further contend that Hon'ble Supreme Court while examining the vires of provision as to TDS in the Orissa Sales Tax Act has held in Steel Authority of India Ltd. Vs. State of Orissa & Others reported in 118 STC 297 (SC) that '*if no provision for deduction of value of transfer of goods interstate, outside State and in the course of import are provided when TDS is made compulsory, that would be ultra vires to constitution'*. In 7 KTR 156 (Ker), Hon'ble High Court of Kerala in R.K. Ubaidu Vs. State of Kerala has held that *"…… if the goods used in the execution of the said work contract are not exigible to tax under the Act…… certainly the awarders cannot deduct any amount by way of tax from the bill amount."* It was further ordered that *'if the petitioner ha got a case that the second and third respondents had already deducted any amount by way of tax from the previous bills, it is for the petitioner to make a request to the assessing authority with copy to the awarder for refund of the said amount and the assessing authority will consider and pass appropriate orders therein expeditiously."*

11. The applicant would conclude that that the transaction under question is an interstate work contract and that they are not liable to pay any tax in the State of Kerala and therefore the awarders should not have deducted any TDS and that they are entitled to immediate refund of the amount corresponding to the TDS illegally deducted from him by the awarder and remitted to the Department.

12. The applicant has requested to clarify as to:-

i. Whether the works contract entered into in between the applicant and KFSDC in the present case is an interstate works contract or not?

ii. Whether the applicant is liable to any tax under Kerala Value Added Tax Act, 2003?

iii. Whether the applicant is entitled to refund of the TDS effected from them and remitted to Government by the awarder (KFSDC)?

iv. What is the procedure to be adopted by the applicant for refund of the TDS, if in case the levy is found to be illegal?

13. The authorized representative of the applicant was heard in the matter and the contentions raised were examined.

14. A perusal of the terms and conditions of the contract would show that the contractor (applicant) has to supply the chairs as per the given specification and fix them on the floor of the theatre with nuts and bolts. Samples shall be supplied by the contractor at his own cost and if any of the materials stored at the site by the contractor for the work are found not in conformity with the specifications or in quality, the same shall be removed from the site at contractor's cost. So it can be seen that ascertained goods as per the given specification moved from outside the State into the State of Kerala pursuant to a concluded contract. Only such goods are accepted. Hence, such supply will come within the scope of inter-state sale. If any local material is used in the installation part, it would be taxable at its transfer value. In the circumstances TDS need not be deducted in the above case.

The issues raised above are clarified accordingly.

C. Lalappan	**T.K. Ziavudeen**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

Sri. S. Suresh Babu,
Advocate, (Rtd.) Joint Commissioner (Taxes),
N.S.S. Taluk Union Building,
Anandavalleeswaram, Kollam.

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

2. T.K. Ziavudeen
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 – Tax liability on the Design, supply, installation, testing and commissioning of 12MWp capacity grid connected Solar PV Power system – Orders issued.

Read : Application from M/s. Bosch Limited, Kochi dtd. 18/3/2015.

ORDER No.C3/9787/15/CT DATED 30/4/2015.

1. M/s. Bosch Limited, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the tax liability on design, supply, installation, testing and commissioning of 12MWp capacity grid connected Solar PV Power system.

2. The applicant is registered under the Kerala Value Added Tax Act, 2003 with TIN 32070381682C and has entered into contract with M/s. CIAL & KSEB for the design, supply, installation, testing and commissioning of solar power generating systems.

3. The applicant would contend that *Solar power generating system* is taxable at the rate of 1% by virtue of Entry 6(10) of the Second Schedule to the Kerala Value Added Tax Act, 2003 whereas *Solar photovoltaic cells, modules and other systems / devices* are taxable at the rate of 1% as per Entry 6(17) of the Second Schedule.

4. The applicant would contend that the contract is divided into two parts:

i. for the supply of Solar PV modules and associated devices like Solar Inverters, Cables, Module Mounting Structures with fasteners, Switchyard, Transformers etc.

ii. for design, installation, civil construction, testing and commissioning of the above PV Modules and all other components.

Rates per unit of PV Module are agreed upon for each category. The first part of the contract involves only supply of materials. Whereas in the case of the second part, apart from supply of materials, labour and services required for the construction of foundation for Module Mounting System and installation of all the components are also involved. In the case of the first part (supply part), the price per unit of each item is specifically mentioned and bills are raised on the awarder strictly in accordance with the rates agreed upon. In the second part, which involves supply of goods as also supply of labour and services, rate is greed upon as a composite contract and is specifically mentioned in the work order. Bill is also raised accordingly.

5. The applicant has requested to clarify the following points:

a. Whether the whole project inclusive of supply, civil construction and installation can be invoiced at the rate of 1% by the applicant without reckoning any works contract?
b. Whether any works contract tax is applicable when both the finished products viz. Solar power generating system and its components and Solar photovoltaic cells, modules and other systems / devices, are taxable at the rate of 1%?
c. What is rate of tax applicable to the second part of the contract involving design, installation, testing and commissioning of Solar Power Generating Systems?
d. Is the applicant eligible to opt for payment of compounded tax in respect of the design, installation, testing and commissioning of solar power generating systems?

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

7. As per the terms of the work order, the scope of the work covers ***Design, supply, installation, testing and commissioning of 12MWp capacity grid connected Solar PV Power system***.

8. Though in the Work Schedule certain quantities are shown separately, it has to be installed on suitable mounts as per specifications at the place pointed out by the awarder, and connected by cables and transformer to a Distribution System. Mentioning of the rates separately does not take the scope of this contract out of the purview of a composite works contract. Even though the rates are mentioned no service or labour part is mentioned separately. Also the essence of the contract is that the contractor should execute the work as a whole, and cannot retract by supplying certain materials only.

9. As such it can be concluded that here the transfer of goods is not as chattels as mentioned in Entry 6(10) of the Second Schedule viz. *Solar power generating system* and the words used there cannot be used to interpret the nature of the contract.

10. The impugned contract involves different types of works including civil works. In the work order the supply and installation portions are so closely interlinked that it is not clearly divisible with regard to supply of materials and labour portion. As such, it can only be treated as an indivisible works contract involving supply of materials and labour and the works contract rate applicable would be 14.5%. With regard to declared goods used in the work the rate would be 5% and is levied on its transfer value.

The issues raised above are clarified accordingly.

C. Lalappan	**T.K. Ziavudeen**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

M/s. Joseph Jerard Samson Rodrigues &
Rovin Rodrigues, Advocates,
Door No. 39/6616, Ist Floor,
Pallath Building,
Kurisupally Road, Ravipuram,
Ernakulam – 682 015.

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

2. T.K. Ziavudeen
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 agricultural and municipal waste conversion devices – Orders issued.
Read : Application from Smt. Susmitha. S, Palakkad dtd. 31/12/2014.

ORDER No.C3/408/15/CT DATED 30/4/2015.

1. Smt. Susmitha. S, Palakkad has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of agricultural and municipal waste conversion devices.

2. The applicant is proposing to manufacture agricultural and municipal waste conversion devices (Incinerator). The applicant has requested to clarify the rate of tax of the commodity.

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

4. Entry 86A of the Third Schedule to the Kerala Value Added Tax Act, 2003 reads:

86A	***Municipal Solid Waste Management Equipment and Plant***	****

5. As such, it is clarified that incinerators which are exclusively used for treating municipal solid waste would be taxable at the rate of 5% by virtue of Entry 86A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

C. Lalappan	T.K. Ziavudeen	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

Sri. Mohandas.V.
Room No. 210, A.M.A. Complex,
Kalmandapam, Palakkad.

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 (General),
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. 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 Neuro Surgery Skull Screws, Mini Plates, Titanium Cranial Mesh and Aneurysm Clips – Orders issued.

Read : Application from Sri. Bobby Mathew, M/s. Medlex Medical Systems, Pattom dtd. 17/10/2014.

ORDER No.C3/31278/14/CT DATED 25/6/2015.

1. Sri. Bobby Mathew, M/s. Medlex Medical Systems, Pattom has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodities Neuro Surgery Skull Screws, Mini Plates, Titanium Cranial Mesh and Aneurysm Clips.

2. The applicant would contend that the above said items are purely implants used in neuro and maxillofacial surgeries. The applicant has placed his reliance on the Clarification Order No. C7.4264/06/CT dtd. 14/12/2007 and would contend that the impugned items are similar implants but is used in cranium area.

3. The applicant has submitted copies of the purchase invoices relating to the commodities Aneurysm clips (Sugita Clips) and Neuro Surgery Skull Screws and Mini Plates used in Neuro surgery. The applicant would contend that the HSN Code of Aneurysm Clips (Sugita Clips) is 9018.90.23.

4. The applicant has requested to clarify the rate of tax of the commodities.

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

6. The commodities Neuro Surgery Skull Screws and Mini Plates are surgical implants and are similar to the commodities discussed in the Clarification Order No. C7.4264/06/CT dtd. 14.12.2007. As such, it is clarified that the commodities Neuro Surgery Skull Screws and Mini Plates are exempt from tax by virtue of Entry 2(1) of the First Schedule to the Kerala Value Added Tax Act, 2003.

7. The commodity Titanium Cranial Mesh can rightly be classified under the HSN Code 9021.39.00 which is included in Entry 2(3) of the First Schedule to the Kerala Value Added Tax Act, 2003 and is exempt from tax.

8. The applicant has admitted that the HSN Code of Aneurysm Clips (Sugita Clips) is 9018.90.23. The HSN Code 9018.90.23 is included in Entry 129(31)(c) of the Third Schedule to the Act. As such, the commodity Aneurysm Clips (Sugita Clips) with HSN Code 9018.90.23 would be taxable at the rate of 5% by virtue of Entry 129(31)(c) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (General)	Joint Commissioner (Law)	Deputy Commissioner (General)

To,

Sri. Arun Babu,
(Accounts in charge)
M/s. Medlex Medical Systems,
T.C. 3/2505-4, Marapalam,
Pattom P.O, Thiruvananthapuram – 695 004.

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. 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 Hydroponics Green House for Maize Fodder Production and accessories – Orders issued.

Read : Application from Sri. Tony Michael, M/s. Greentech Agencies, Pala dtd. 28/3/2015.

ORDER No.C3/12308/15/CT DATED 25/7/2015.

1. Sri. Tony Michael, M/s. Greentech Agencies, Pala has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of Hydroponics Green House for Maize Fodder Production and accessories.

2. The applicant is borne on the rolls of the Office of the Commercial Tax Officer, Pala and is engaged in the business of distribution of 'Hydroponics Green House for Maize Fodder production and accessories'. The commodity is purchased from Gujarat. The applicant would contend that the commodity is not machinery used for manufacture of animal feeds, but for making grass from maize. The applicant has requested to clarify the rate of tax of the commodity.

3. The applicant was heard in the matter and the contentions raised were examined.

4. Green Houses are classified under the HSN Group 9406 of the Customs Tariff Act. The HSN Group 9406 does not appear in any of the Schedules to the Kerala Value Added Tax Act. Further none of the entries in any of the Schedules to the Act is suitable for incorporating the commodity. As such it is hereby clarified that the commodity Hydroponics Green House for Maize fodder

Production classified under the HSN Group 9406 would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

Sri. Tony Michael,
C/o. J&J Associates,
Vazhayil Arcade, Pala,
Kottayam – 686 575.

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. 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 Icing Sugar – Orders issued.

Read : Application from M/s. Ros Products, Kakkana, Ernakulam dtd. 16/4/2015.

ORDER No.C3/13995/15/CT DATED 3/8/2015.

1. M/s. Ros Products, Kakkana, Ernakulam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of Icing sugar.

2. The applicant is a MSME Unit manufacturing food ingredients like Baking powder, Corn flour, Custard powder etc. and intends to manufacture Icing sugar. The ingredients of Icing sugar are cane sugar and corn flour. It is a bakery and confectionary ingredient used to manufacture different types of bakery and confectionary products. The applicant's contention is that the product is classified under the CET Schedule Entry 1704.90 which reads *Sugar confectionery (excluding white chocolate and bubble gum)*. The applicant has requested to clarify the rate of tax of the commodity.

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

4. The Kerala Value Added Tax Act, 2003 is aligned with the Customs Tariff Act and not with Central Excise Act. As such the matter is to be examined with reference to the HSN Code 1704 appearing in the Customs Tariff Act which, as relevant to the context, is extracted hereunder:

1704	**SUGAR CONFECTIONERY(INCLUDING WHITE CHOCOLATE),NOT CONTAINING COCOA**
1704 10 00	- Chewing gum, whether or not sugar coated
1704 90	- *Other:*
1704 90 10	--- Jelly confectionery
1704 90 20	--- Boiled sweets, whether or not filled
1704 90 30	--- Toffees, caramels and similar sweets
1704 90 90	--- Other

5. Confectionery means *Candies and other confections considered as a group*. The HSN Group 1704 includes confectionery items made of sugar like chewing gum, jelly confectionery, boiled sweets, toffees, caramels etc. But Icing sugar or Confectioner's sugar is not a confectionery item. It is finely ground sugar made by milling normal granulated sugar into a powdered state. It usually contains a small amount of anti-caking

agent to prevent clumping and improve flow. In industrial food production, it is used where a quick dissolving sugar is required. Domestically, it is principally used to make icing or frosting and other cake decorations. As such the commodity cannot be classified under the HSN 1704.90.

6. Further the HSN Code admitted by the applicant i.e. 1704.90 does not appear in any of the Schedules to the Kerala Value Added Tax Act.

7. Another HSN Code to be examined in this regard is 1701. The HSN Group 1701 of the Customs Tariff Act reads as extracted hereunder:

1701	**CANE OR BEET SUGAR AND CHEMICALLY PURE SUCROSE, IN SOLID FORM**
	- Raw sugar not containing added flavouring or colouring matter:
1701 11	*-- Cane sugar:*
1701 11 10	--- Cane jaggery
1701 11 20	--- Khandasari sugar
1701 11 90	--- Other
1701 12 00	-- Beet sugar
	- Other:
1701 91 00	-- Refined sugar containing added flavouring or colouring matter
1701 99	*-- Other:*
1701 99 10	--- Sugar cubes
1701 99 90	--- Other

On examination of the above said HSN Codes it can be seen that the commodity Icing sugar would be classifiable under the HSN 1701.99.90. The impugned HSN Code is not seen included in any of the Schedules to the Kerala Value Added Tax Act. Further, none of the Entries in any of the Schedules to the Act is suitable for incorporating the commodity.

8. As such, it is hereby clarified that the commodity Icing Sugar classified under the HSN Code 1701.99.90 would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	Joint Commissioner (Law)	Deputy Commissioner (General)

To

Sri. Tom Thomas,
M/s. Ros Products,
XIV/467, Chittethukara,
Kakkana, Ernakulam.

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. 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 Fibre to the Home Converter – Orders issued.

Read : Application from M/s. Southern Infra Tech, Koothattukulam dtd. 18/3/2015.

ORDER No.C3/10256/15/CT DATED 3/8/2015.

1. M/s. Southern Infra Tech, Koothattukulam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of Fibre to the Home Converter (FTTH Converter).

2. The applicant would contend that the product FTTH Converter is classified under the HSN 8517.70.90. The applicant has referred Entry 69(30) of the Third Schedule which reads as follows:

69 IT Products

(30) Parts of HSN heading No. 8517 8517.70

3. The applicant placing reliance on the Rules of Interpretation of Schedules appended to the Act would contend that a six digit HSN Number is given in the above said Entry. So, it will cover all items coming under that Sub-heading including HSN 8517.70.90. Hence the applicant's contention is that the impugned product would be taxable at the rate of 5% by virtue of Entry 69(30) of the Third Schedule. The applicant has requested to clarify the rate of tax of the commodity.

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

5. A copy of the Bill of Entry for Home Consumption with regard to the impugned product was produced before this Authority at the time of hearing. An examination of the copy of the Bill of Entry would show that the product description reads GRN-900C-PIGTAIL TYPE CABLE WITH CONNECTOR, (CONVERT OPTCIAL SIGNALS INTO ELECTRICAL SIGNALS) and the HSN Code mentioned therein is 8517.69.90.

6. Neither the six digit HSN Code 8517.69 nor the eight digit HSN 8517.69.90 appear in any of the Schedules to the Kerala Value Added Tax Act, 2003. Since there is a specific HSN Code i.e. 8517.69.90 for the impugned product, the question of classifying the product in any other HSN Code does not arise. As such, it is hereby clarified that the product Fibre to the Home Converter viz. GRN-900C-PIGTAIL TYPE CABLE WITH CONNECTOR, (CONVERT OPTICAL SIGNALS INTO ELECTRICAL SIGNALS) classified under the HSN 8517.69.90 would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	Joint Commissioner (Law)	Deputy Commissioner (General)

To

M/s. S. Anil Kumar, K.S. Hariharan & K. Uma Maheswar,
Advocates,
Haridev Buildings, Old Railway Station Road,
Kochi – 682 018.

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. 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 Life-jackets & Life-buoys – Orders issued.

Read : Application from M/s. Casmir Exim (Pvt.) Ltd., Kollam dtd. 7/2/2014.

ORDER No.C3/5227/14/CT DATED 4/8/2015.

1. M/s. Casmir Exim (Pvt.) Ltd., Kollam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of life-jackets & life-buoys.

2. The applicant is a dealer in life-jackets and life-buoys, products made up of rubber and cotton. They are used as life saving jackets and are worn by swimmers and travellers in boats and ships. The goods are purchased from Bhavnagar and the applicant

is the first seller in the State. The commodities are not specifically mentioned in any of the Schedules to the Kerala Value Added Tax Act.

3. The applicant has relied on Entry 115(7) of the Third Schedule to the Kerala Value Added Tax Act and would contend that the HSN Code mentioned therein is 8907. Hence, as per the Rules of Interpretation, the HSN Code of life-jackets should be 8907. The applicant would also contend that Section 17 of the Central Excise Tariff Act, 1985 (Chapter 89) comprises of the items – aircraft, vessels and associated inflatable rafts. So, life-jackets and buoys should fall under Entry 115 (7) of the Third Schedule. The applicant has requested to clarify the rate of tax of the commodities.

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

5. As per the Customs Tariff Act, life-jackets are classified under the HSN Group 6307. The HSN 6307, as relevant to the context, is extracted hereunder:

6307	**OTHER MADE UP ARTICLES, INCLUDING DRESS PATTERNS**
6307 10	*- Floor-cloths, dish-cloths, dusters and similar cleaning cloths:*
6307 10 10	--- Of cotton
6307 10 20	--- Of man-made fibres
6307 10 90	--- Other
6307 20	**- Life-jackets and life-belts:**
6307 20 10	--- Of cotton
6307 20 90	--- Other

Life jackets of cotton are classified under the HSN 6307.20.10 and those of other substances are classifiable under the HSN 6307.20.90. Neither the four digit HSN 6307 nor the six digit HSN 6307.20 appear in any of the Schedules to the Kerala Value Added Tax Act. Since there is a specific HSN Code for life-jackets, it cannot be classified under any other HSN Group. As such, the question of classifying life-jackets in Entry 115(7) of the Third Schedule (having the HSN 8907) does not arise. None of the entries in any of

the Schedules to the Kerala Value Added Tax Act is suitable for incorporating the commodity. Hence, it is hereby clarified that life-jackets classified under the HSN 6307.20, would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

6. The HSN Appearing in Entry 115(7) is 8907. The Heading of Chapter 89 of the Customs Tariff Act reads ***Ships, boats and floating structures*** and the HSN 8907 reads as under:

8907	**OTHER FLOATING STRUCTURES (FOR EXAMPLE, RAFTS, TANKS, COFFER-DAMS, LANDING-STAGES, BUOYS AND BEACONS)**
8907 10 00 -	Inflatable rafts
8907 90 00 -	Other

7. A buoy is a distinctively shaped and marked float, sometimes carrying a signal or signals, anchored to mark a channel, anchorage, navigational hazard, etc., or to provide a mooring place away from the shore. Buoy classified under the HSN 8907 is a floating structure similar to rafts, tanks, coffer dams, landing stages or beacons and is distinct from a life-buoy. A life-buoy is a personal floatation device designed to assist the wearer to keep afloat. It is a buoyant support which prevents the user from drowning. Its purpose is similar to that of a life-jacket or life-belt.

8. Hence, it can safely be concluded that life–buoy which is a personal floatation device designed to assist the wearer to keep afloat is commercially distinct from a buoy and hence cannot be classified under the HSN 8907.

9. As such, it is hereby clarified that the commodity life-buoy would also be classifiable under the HSN 6307.20, and would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	Joint Commissioner (Law)	Deputy Commissioner (General)

To

M/s. Y. Mathew Associates,
Advocates & Tax Consultants,
Lakshmana Nagar – 28,
Asramom, Kollam.

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. 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 Coconut sugar – Orders issued.

Read : Application from M/s. KLF Nirmal Industries (P) Ltd., Irinjalakuda, dtd. 6/5/2015.

ORDER No.C3/15732/15/CT DATED 4/8/2015.

1. M/s. KLF Nirmal Industries (P) Ltd., Irinjalakuda has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of coconut sugar.

2. The applicant submits that coconut sugar is made from Sap, the sugary circulating fluid of the coconut plant. Liquid sap collected in a container is placed under heat until most of the water content is evaporated and the impugned product coconut

sugar is obtained which is in granules form. This is grinded to convert the same into powder form. The applicant has requested to clarify the rate of tax of coconut sugar.

3. The applicant has also produced a copy of the Bill of Entry for Home Consumption with regard to the commodity, wherein the product description reads Coconut Sugar Powder and the HSN Code is 1702.90.10. The applicant has requested to clarify the rate of tax of the commodity.

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

5. Entry 49 of the First Schedule to the Kerala Value Added Tax Act, 2003 reads:

49	***Sugar and Khandasari***	
(1)	*Cane sugar*	*1701.11*
(2)	*Beet sugar*	*1701.12.00*
(3)	*Refined Sugar containing added flavouring or colouring matter*	*1701.91.00*
(4)	*Sugar cubes*	*1701.99.10*
(5)	*Palmyra Sugar*	*1702.90.10*

The HSN Code 1702.90.10 is included in Entry 49(5) of the First Schedule to the Act.

6. As such, it is hereby clarified that the commodity coconut sugar which is classified under the HSN Code 1702.90.10 would be exempt from tax by virtue of Entry 49(5) of the First Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

Sri. George P.K,

Accounts Officer,
M/s. KLF Nirmal Industries (P) Ltd.,
Fr. Dismas Road, Irinjalakuda.

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 (General),
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. 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 brooms, brushes and mops made of plastic – Orders issued.

Read : Application from Sri. E.N. Chandradathan, M/s. Yesjay Plast, Alangadu dtd. 31/3/2015.

ORDER No.C3/12306/15/CT DATED 1/9/2015.

1. Sri. E.N. Chandradathan, M/s. Yesjay Plast, Alangadu, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax applicable on:

i. *brooms, brushes and mops of handles made of iron rods and bottom cleaning portion touching the floor with exclusively looms and threads of cotton.*

ii. *brooms, brushes and mops of handles made of plastic rods as well as aluminium or iron rods and bottom cleaning portion touching the floor with exclusively rubber pad.*

2. The applicant has referred to Entry 7 of the First Schedule which reads:

7 Brooms and brushes including mops of a kind used for floor cleaning and toilet cleaning other than those specifically mentioned in the Third Schedule

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3. The applicant has also referred to the Third Schedule Entry 18A introduced vide Kerala Finance Act -2015 which is extracted hereunder:

18A Brooms, brushes and mops made of plastic used for floor cleaning and toilet cleaning

******

4. The applicant would contend that in none of the above said entries, HSN Code is given. The applicant placing reliance on the Rules of Interpretation would contend that since no HSN Code has been given, both the entries have to be examined in common parlance.

5. The applicant would further contend that in the case of brooms, brushes and mops, the activity of cleaning is done by that portion of the device which gets in touch with the surface to be cleaned. So, where the entry uses the adjective 'made of plastic', it refers to that part of the device which does the cleaning process. So Entry 18A of the Third Schedule will apply only to brooms, brushes and mops, whose part which does the cleaning process is made of plastic, irrespective of the handle or rod at the end of which the bristles or threads are attached. All other types will be covered by Entry 7 of the First Schedule.

6. The applicant would also contend that in the case of products, on which clarification has been sought, the cleaning portion is made of looms and threads of cotton or rubber pad and hence they will fall under Entry 7 of the First Schedule to the Act.

7. The applicant has requested to clarify the rate of tax of the commodities.

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

9. The intention of the Legislature in introducing Entry 18A of the Third Schedule was to promote the use of natural fibre items which are bio-degradable and also to discourage the use of plastic items which are hazardous to the environment. Apparently the Legislative intention was to tax all those brooms, brushes and mops, in the manufacture of which plastic is used in any form, either in the handle or in the portion used for cleaning.

10. As such, it is clarified that brooms, brushes and mops, in the manufacture of which plastic is used in any form, either in the handle or in the portion used for cleaning would be taxable at the rate of 5% by virtue of Entry 18A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

M/s. S. Anil Kumar, K.S. Hariharan & K. Uma Maheswar,
Advocates,
Haridev Buildings, Old Railway Station Road,
Kochi – 682 018.

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. 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 polypropylene fishing ropes after the introduction of Kerala Finance Bill, 2015 – Orders issued.
Read : Application from M/s. Jos & Company, Kozhikode dtd. 11/4/2015.

ORDER No.C3/13898/15/CT DATED 1/9/2015.

1. M/s. Jos & Company, Kozhikode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether polypropylene fishing ropes with HSN Code 5607.49.00 continue to be exempted from tax even after the amendment to Entry 18 of the First Schedule to the Kerala Value Added Tax Act, 2003.

2. The applicant has referred to Entry 18 of the First Schedule to the Act prior to introduction of Kerala Finance Bill - 2015 which stood as follows:

18 Fishnet, Fishnet fabrics and accessories

(1) Made up fishing nets of nylon	*5608.11.10*
(2) Fish nets of other materials	*5608.11.90*
(3) Nylon fish net twine	*5607.50.10*
(4) Nylon Rope	*5607.50.40*
(5) Polyester Rope, Polyester twine	*5607.50.90*
(6) Other fishing twines and ropes	*5607.49.00*
(7) Fishing rods and tackles	*******
(8) Accessories such as fishing hooks, floats for fish nets, lead balls	*******

.

3. The applicant submits that all purchases effected by them are inter-state and has produced copies of the Tax Invoice to support the contention that the goods are classified under the HSN 5607.49.00. The applicant would contend that the products covered under HSN Code 5607.49.00 of the Customs Tariff Act are twines, ropes, cordages and cables made up of

polypropylene commonly known as P.P. Ropes which are mentioned as *Other fishing twines and ropes* in Entry 18(6) of the First Schedule to the Kerala Value Added Tax Act.

4. The applicant would further submit that as per Kerala Finance Bill - 2015, sub-entry (4) has been omitted and sub-entry (5) has been substituted as follows:

> *"(5). Nylon ropes, polyester ropes and polyester twines sold by Matsyafed, Theeramythri units approved by Government and Fishermen Co-operative Societies. ******** "*

But no change has been made in sub-entry (6). Certain assessing authorities are of the view that *Other fishing twines and ropes* with HSN *5607.49.00* are also taxable w.e.f 1/4/2015.

5. The applicant placing his reliance on the Rules of Interpretation of Schedules appended to the Act and the Clarification Order No. C3/20255/12/CT dated 29/10/2012 would contend that P.P Ropes with HSN Code 5607.49.00 falls under Entry 18(6) of the First Schedule and is exempt from tax even after the above said amendments.

6. The applicant has requested to clarify whether fishing ropes with HSN Code 5607.49.00 continue to be exempt from tax by virtue of Entry 18(6) of the First Schedule or is taxable under the Act w.e.f. 1/4/2015.

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

8. As per the Kerala Finance Act – 2015 passed by the Legislative Assembly, the following amendments have been made in Entry 18 of the First Schedule to the Kerala Value Added Tax Act and it now reads as follows:

18 Fishnet, Fishnet fabrics and accessories

(1) Made up fishing nets of nylon *5608.11.10*

(2) Fish nets of other materials *5608.11.90*

(3) Nylon fish net twine *5607.50.10*

(x) xxxxxxxxx *xxxxxxxxxx*

(5). Nylon ropes, polyester ropes, polyester twines, other Plastic ropes and twines sold by Matsyafed, Theeramythri units approved by Government and Fishermen Co-operative Societies.

********** *(x) xxxxxxxxxxxxx* *xxxxxxxxxx*

(7) Fishing rods and tackles *******

(8) Accessories such as fishing hooks, floats for fish nets, lead balls *******

The amendment whereby sub-entry (6) of Entry 18 was omitted has been given effect only from 29/7/2015.

9. As such it is hereby clarified that polypropylene ropes classified under the HSN Code 5607.49.00 would be exempt from tax by virtue of Entry 18(6) of the First Schedule to the Kerala Value Added Tax Act upto 28/7/2015; but after the coming into force of Kerala Finance Act - 2015 on 29/7/2015, all polypropylene ropes other than those sold by Matsyafed, Theeramythri units approved by Government and Fishermen Co-operative Societies would be taxable at the rate of 5% by virtue of Entry 99A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

Adv. Arun Shankar C.S.
M/s. Warrier & Associates, Advocates,
Sanchia Apartments,
Near Sales Tax Complex,
Jawahar Nagar Colony Main Road,
Eranhipalam, Kozhikode – 673 006.

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. N. Thulaseedharan Pillai.
Joint Commissioner (General),
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. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Works contract and liability to deduct tax at source – Orders issued.

Read : 1. Application from M/s. Annai Infra Developers Pvt. Ltd., Erode, dtd. 27/12/2014.
2. Judgment of the Hon'ble High Court of Kerala in WP(C) No.22116 of 2015 (L) dtd. 3/8/2015.

ORDER No.C3/40582/14/CT DATED 28/9/2015.

1. M/s. Annai Infra Developers Private Limited, Erode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether materials which moved from the State of Tamil Nadu to the State of Kerala for the purpose of using in the execution of the works contract is liable to be taxed under Kerala Value Added Tax Act, 2003.

2. The applicant is a company registered under the Companies Act, 1956 and is registered with the Public Works Department and Highways Department as Class-I Contractor and undertakes irrigation and highways projects in Tamil Nadu. The company is registered under TNVAT Act, 2005 and CST Act, 1956 and is paying tax under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The applicant submits that tenders were invited by the Chief Engineer, Kerala State Rural Roads Development Agency under the Prime Minister Gram Sadak Yojana (PMGSY) for building rural roads and the applicant applied for the same through bidding process and was awarded the contract for construction of roads in various places in Palakkad District. Based on this, the applicant registered themselves with the Kerala Commercial Taxes Department solely for the purpose of executing the contract.

4. The applicant submits that in order to construct the roads, they purchased raw materials from various suppliers in the State of Tamil Nadu who were supplying the said materials on payment of Central Sales Tax at full rates and were delivering the goods so purchased to the applicant in the State of Kerala and post the same, it is used in the works contract by the applicant which is deemed as a sale in terms of the fiction created in the concept of sale by the 42nd Amendment to the Constitution. The applicant would contend that for the purpose of making the above said deemed

sale pursuant to execution of works contract, the applicant is purchasing the goods from various suppliers located in Tamil Nadu and this deemed sale pursuant to execution of works contract by them has occasioned the movement of goods from the State of Tamil Nadu to the State of Kerala.

5. The applicant would further contend that the Finance Act of 2002 substituted the definition of 'sale' in Section 2(g) of the Central Sales Tax Act, which included 'transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract'. This amended definition was given effect from May 11th, 2002. This was followed by another amendment in 2005, i.e., addition of a proviso to the definition of 'sale price' contained in Section 2(h). The definition and proviso reads as under:

> Sec. 2(h): *'sale price' means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged:*
>
> *Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause".*

The applicant would further submit that one more amendment was made in 2005 in Section 13 of the Central Sales Tax Act by which the Rule making power was conferred on the Central Government to provide for the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to clause (h) of Section 2. By these amendments to the Act, the position became clear that there can be an inter-state deemed sales in works contract and once a contract is held as an inter-state contract, there is no tax liability on such sale in the State of Kerala and hence TDS cannot be made.

6. The applicant contends that while making payment to the applicant, TDS is made by the awarder, despite the provision in law which lays down that there cannot be any tax in the State of Kerala when the contract is an inter-state works contract.

7. The applicant would contend that the Punjab & Haryana High Court in Thomson Press (India) Ltd. Vs. State of Haryana (1996) 100 STC 417 (P&H) held that *if the inter-state movement of goods arises due to a pre-existing contract then inputs and goods involved in the execution of the works contract shall also be deemed to have moved and the State Government cannot levy tax on deemed sales of such goods*. The applicant would submit that in East India Cotton Mfg. Co. Ltd. Vs. State of Haryana (1993) 90 STC 221 (P&H) the assessee received gray fabric from outside the State to process into dyed and printing fabric and after processing, it dispatched the same to the dispatching State. It was held that *movement of cloth is occasioned by the contract of sale within the meaning of section 3 of the CST Act and the transaction amounts to an interstate sale*. The applicant would also contend that in the case of Sundaram Industries Ltd. Vs. State of Tamil Nadu (2002) 128 STC 373 Tribunal, it was held that *when tyres are received for re-threading from the State of Kerala and the rethreading was done in Tamil Nadu, the sale is a local sale*. This decision was appealed against in

the Hon'ble High Court of Madras and the Court set aside the decision [(2002) 128 STC 358 Mad] and hence the position that is established is that rethreading of tyres received from one State and sent back to that State is an inter-state works contract. The petitioner has also relied upon the decision of the Hon'ble High Court of Kerala in OTA No. 8 of 2012 to support his contentions.

8. The applicant would submit that in as much as the goods required for the contract is procured from the State of Tamil Nadu as is evidenced by the purchase bills, the Authority may clarify that Value Added Tax is not applicable for the said contract and therefore TDS need not be made by the Chief Engineer, Kerala State Rural Roads Development Agency. The applicant has requested to clarify the issue.

9. The Hon'ble High Court of Kerala vide the judgment read as paper 2nd above has directed this Authority to consider the clarification application *within a period of two months*.

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

11. A perusal of the contractual document entered into between the applicant and the awarder would show that there are no stipulations regarding the supply of materials to be used in the work. The applicant can procure the materials either from the State of Kerala or from any other State. In the absence of any such stipulation, it cannot be said that the movement of goods from the State of Tamil Nadu to the State of Kerala was occasioned on the basis of a pre-determined contract, merely for the reason that certain goods were procured from the State of Tamil Nadu. As such, it is hereby clarified that the works contract in question is a local works contract and the awarder has to deduct tax at source.

12. The issues raised above are clarified accordingly and the direction of the Hon'ble High Court in WP(C) No. 22116 of 2015 (L) is dated 3/8/2015 is hereby complied with.

N.Thulaseedharan Pillai	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (General)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

Sri. D. Chandra Sekaran, F.C.A,
Partner,
M/s. K. Ananthram & Co.,
Chartered Accountants,
28-31, Agilmedu Street – II,
Erode – 638 001.
Tamil Nadu.

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. N. Thulaseedharan Pillai.
Joint Commissioner (General),
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. 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 Silicon Sealant classified under the HSN 3910.00.90 of the Customs Tariff Act – Orders issued.

Read : 1. Application from M/s. Mobil AB Glue World, Thiruvananthapuram dtd. 29/5/2015.
2. Judgment of the Hon'ble High Court of Kerala in WP(C) No. 17202 of 2015 (A) dtd. 3/7/2015.

ORDER No.C3/19010/15/CT DATED 5/10/2015.

1. M/s. Mobil AB Glue World, Thiruvananthapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodity Silicon Sealant classified under the HSN Code 3910.00.90.

2. The applicant would contend that Silicon Sealant is a type of resin used for sealing / filling the gaps of glass etc. and is being imported from outside the Country. The Item is cleared by the Customs Authorities under Heading No. 3910.00.90 of the Customs Tariff Act. The applicant would submit that Chapter 3910 of the Customs Tariff Act reads as follows:

3910	**Silicones in primary forms**
3910 00	*- Silicones in primary forms*
3910 00 10	*- Silicone resins*
3910 00 20	*- Silicone oils*
3910 00 90	*- Others*

The applicant would further contend that Note No. 6 of Chapter 39 reads as under:

6. In headings 3901 to 3914 the expression 'primary forms' applies to the following forms:

(a) liquids and pastes, including dispersions (emulsions and suspensions) and solutions;
(b) blocks of irregular shape, lumps, powders (including moulding powders) granules, flakes and similar bulk forms'

The applicant would submit that their item is sold in a paste form.

3. The applicant would further contend that the HSN 3910.00.90 appears as Entry 118(10) of List A of the Third Schedule to the KVAT Act which reads as follows:

118 Plastic granules, plastic powder and master batches

(10) Silicones in primary forms, resins 3910

4. The applicant would further submit that previously the item was classified by the Assistant Commissioner of Customs (Imports), Kochi as falling under HSN 3506.10.00. In appeal, the Commissioner of Customs (Appeals), Kochi held that the item has to be classified under the Heading 3910.00.90 holding that it is 100% Silicon.

5. The applicant placing his reliance upon the Rules of Interpretation of Schedules and the decision in Reckitt Benckiser Case would contend that the item should be taxable at 5%. 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. The applicant has produced a copy of the Order in Appeal No. 281/08 dated 21/10/2008 of the Commissioner of Customs (Appeals), Kochi wherein it is seen that M/s. Mobil AB Glue World, Kochi had earlier imported a consignment of G.P. Silicon Sealant and the Assistant Commissioner of Customs (Imports), Kochi classified the goods under the HSN 3506.10.00 for the purpose of assessment. Aggrieved by the said assessment, the party preferred an appeal against the order. The Commissioner of Customs (Appeals), Kochi allowed the appeal and the operative portion of the appellate order, as relevant to the context, is extracted hereunder:

> *The classification under 35061000 as product suitable for use as glue or adhesive, put up for retail sale as glue or adhesive not exceeding a net weight of 1 Kg has been done seemingly on the basis of the size of container which is 300 gms. However, the product is tested as silicon and is no glue or adhesive. The nature of the product does not change because of the size of the container. Classification therefore has to be made as silicon irrespective of the size of the containers. The classification therefore has to be under 39100090. The product data shows it to be 100% silicon. Examination report also confirms that. I therefore allow the appeal.*

8. The applicant has also produced a copy of the Bill of Entry for Home Consumption issued by the Appraiser of Customs, Cochin Special Economic Zone, Kakkanad, Cochin – 37 wherein the commodity Silicon Sealant is seen classified under the HSN 3910.00.90.

9. As such, it is hereby clarified that the commodity dealt by the applicant viz. Silicon Sealant imported and cleared under the HSN 3910.00.90 would be taxable at the rate of 5% by virtue of Entry 118(10) of List A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

N.Thulaseedharan Pillai	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (General)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

M/s. A. Abdul Salaam, S. Jayaraj & S. Radhakrishnan Thampi,
Advocates,
T.C. 49/45-3, Kamaleswaram,
Thiruvananthapuram.

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 of Dolomite – Orders issued.
Read : Application from M/s. Southern Phosphate & Mineral, Kochi dtd. 6/5/2015.

ORDER No.C3/16043/15/CT DATED 19/10/2015.

1. M/s. Southern Phosphate & Mineral, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of dolomite.

2. The applicant is a dealer registered under the Kerala Value Added Tax Act, 2003 borne on the rolls of the Office of the Assistant Commissioner (Assessment), Special Circle-III, Ernakulam, and is a dealer in fertilizers and agro based products. The applicant deals in natural rock phosphate, urea, MOP, DAP and dolomite. The applicant would submit that the commodity dolomite is purchased from Karnataka; Tamil Nadu etc. against 'C' Form Declarations.

3. The applicant would contend that dolomite is a lime mineral containing calcium and magnesium. Dolomite is a natural mineral pulverized to the required fineness which is applied to the soil and hence it should fall under the category of fertilizers. Moreover the end use of the material should be the prime criteria for fixing Sales Tax. Dolomite dealt by the applicant is used only for agricultural purpose (Dolomite Fertilizer Grade) and all kinds of fertilizers are exempted under the Kerala Value Added Tax Act. The applicant would further contend that under the KGST Act, 1963, Dolomite was included under Schedule I, Entry No 57. Thereafter the item was shifted to Schedule III - Entry No. 81(6) under the Kerala Value Added Tax Act. By the Finance Act, 2011, all fertilizers, bio-fertilizers, micronutrients, and similar items were included under Entry No.17B of the First Schedule and dolomite which is a micronutrient is to be classified under this Entry.

4. The applicant placing his reliance upon the State Planning Board's publication 'Fertility of Soils of Kerala-2013' would contend that the mineral dolomite is a component of calcium and magnesium and is used as a micronutrient.

5. The applicant would further contend that dolomite listed in Entry 81(6) of the Third Schedule to the Act is a product consumed in the manufacture of cement and is of higher grade and purity, and is costly. The dolomite used for agricultural purpose is low grade and low cost.

6. The applicant has requested to clarify the rate of tax of the commodity.

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

8. Entry 81(6) of the Third Schedule to the Act as relevant to the context is extracted hereunder:

81 Lime, limestone, clinker and dolomite

(6) Dolomite 2518

9. Dolomite is essentially an industrial input, which may also be used as a fertilizer. The Legislative intention is clear in the above said Entry whereby all types of dolomite have been specifically included within the scope of the said Entry. In view of the above facts, it is hereby clarified that all types of dolomite would be taxable at the rate of 5% by virtue of Entry 81(6) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N.Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (Law)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

M/s. Southern Phosphate & Mineral,
39/986 – A2, Subhash Chandra Bose Road,
Vyttila P.O., Kochi – 682 019.

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 of certain toys – Orders issued.
Read : Application from M/s. Nandi Marketing, Thrikkakara, Ernakulam dtd. 9/4/2015.

ORDER No.C3/13485/15/CT DATED 26/10/2015.

1. M/s. Nandi Marketing, Thrikkakara, Ernakulam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of certain toys.

2. The applicant is a dealer in Toys – Manual as well as Battery operated and other products. The applicant imports toys and sell the same in the local market. The applicant would contend that the HSN Code of the 'Toys – Battery operated' that they import is 9503.00.90. The applicant placing reliance upon the Rules of Interpretation of Schedules and the Apex Court judgment in Reckitt Benckiser Case would contend that the commodity 'Toys – Battery operated' classified under the HSN 9503 would be taxable at the rate of 5% by virtue of Entry 130(3) upto 31/3/2015.

3. The applicant also deals in Toys – Manually operated made exclusively of plastic and Toys made of metals with plastic accessories. The applicant has requested to clarify the following points:

i. Whether 'Toys – Battery operated' with HSN 9503.00.90 fall under Entry 130 of the Third Schedule upto 31/3/2015.
ii. Rate of tax of 'Toys – Battery operated' from 1/4/2015.
iii. Rate of tax of 'Toys Manually operated made exclusively of Plastic' from 1/4/2015.
iv. Rate of tax of 'Toys Manually operated made exclusively of Metal' from 1/4/2015.
v. Rate of tax of 'Toys Manually operated made of Metals with Plastic accessories' from 1/4/2015.

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

5. Entry 130 of the Third Schedule to the Kerala Value Added Tax Act, 2003 prior to the Kerala Finance Bill - 2015 stood as follows:

130 Toys excluding electronic toys

(1)	*Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls carriages*	*9501.00.10*
(2)	*Dolls representing only human beings*	*9502*
(3)	*Other toys*	*9503*

6. The Customs Tariff Item 9503, as relevant to the context, is extracted hereunder:

9503	***TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALLKINDS***
9503 00	*- Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:*
9503 00 10	*--- Of wood*
9503 00 20	*--- Of metal*
9503 00 30	*--- Of plastics*
9503 00 90	*--- Other*

7. The applicant has produced copies of the Bill of Entry for Home Consumption wherein the HSN Code mentioned is 9503.00.90. Since there is a specific HSN Code, classification under any other HSN Code is not warranted. As such, it is hereby clarified that those toys imported by the applicant which are classified by the Customs Authorities under the HSN Code 9503.00.90 would be taxable at the rate of 5% upto 31/3/2015 by virtue of Entry 130(3) of the Third Schedule to the Kerala Value Added Tax Act, 2003 (as it existed prior to Kerala Finance Bill – 2015).

8. A perusal of the product catalogue submitted by the applicant also mentions Prams. It may be noted that prams (Baby carriages) are not includible in the HSN Code 9503; as it is classified under the HSN Group 8715 which reads:

8715	***BABY CARRIAGES AND PARTS THEREOF***
8715 00	*- Baby carriages and parts thereof:*
8715 00 10	*--- Baby carriages*
8715 00 20	*--- Parts*

The said HSN is not included in any of the Schedules to the Act. Hence Baby Carriages would be taxable at the rate of 14.5% by virtue of Entry 76(1) of S.R.O. No. 82/2006.

9. As per the Kerala Finance Act, 2015, Entry 130 of the Third Schedule has been amended as follows:

130	***Toys excluding electronic and plastic toys***	***xxxx***

10. The intention of the Legislature was to tax all types of electronic toys and all such toys made of plastic or having components or accessories made of plastic at RNR. Further, the amended

Entry 130 of the Third Schedule does not have any HSN Code. As such, it is hereby clarified that all electronic toys would be taxable at the rate of 14.5% by virtue of Entry 35 of S.R.O. No. 82/2006 w.e.f.1/4/2015. It is also clarified that all manually operated toys made of plastic and all manually operated toys made of metals with plastic accessories would be taxable at the rate of 14.5% w.e.f 1/4/2015. It is also clarified that manually operated toys made exclusively of metal would be taxable at the rate of 5%.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N.Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (Law)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

M/s. Kamath & Kamath,
Advocates,
'Ram Das', VII/1690A (Old No. VIII/1493A),
Gujarathi road, Kochi – 682 002.

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 – Rate of tax of Appy Fizz – Issue already settled by the Hon'ble High Court – Orders issued.

Read : Application from M/s. Parle Agro Pvt. Ltd., Palakkad, dtd. 24/8/2015.

ORDER No.C3/30526/15/CT DATED 6/11/2015.

1. M/s. Parle Agro Pvt. Ltd., Palakkad, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the product 'Appy Fizz'.

2. The applicant is a dealer borne on the rolls of the Office of the Commercial Tax Officer, First Circle, Palakkad. The dealer is seeking clarification on the following points:

I. *Whether the Product 'Appy Fizz' which has been classified and assessed Notification No. S.R.O. No.82 of 2006 issued in exercise of powers conferred by clause (d) of sub-section (1) of Section 6 of Kerala Value Added Tax Act, 2003 under Entry No. 71 as "Fruit Juice Based Drink" as per Central Excise Classification No. 22029020. The said entry has been realigned by Notification S.R.O. No. 119 of 2008 dated 24.1.2008 vide Entry No. 9 the Entry No. 71 is substituted and the product is re-aligned under Entry 5 as 'Similar other products not specifically mentioned under any other entry in this list or any other schedules' is correct or not?*

II. *Whether, when there is no change either in process or in character of the product. Similarly, there is no change in Excise Tariff Classification. Therefore, when basic character of the product is unchanged earlier which was classified under Entry No. 71 with sub-classification at Entry No. (4) as 'Fruit Juice Based Drink' whether will get classified in residual sub-category at Entry No. 5 and therefore, will be chargeable to 14.5% as per clause (d) of Sub-section (1) of Section 6 of Kerala VAT Act, 2003 is correct or not ?*

III. *Whether the product classified under clause (d) of sub-section (1) of Section 6 of Kerala Value Added Tax Act, 2003 is mutually exclusive of the products classified*

under clause (a) of sub-section (1) of Section 6 of Kerala Value Added Tax Act, 2003?

3. The case was posted for hearing on 19.09.2015 and Sri. Arshad Hidayathullah, Senior Advocate, New Delhi appeared for the applicant and raised the following contentions and produced certain documents in support of their contentions.

a. The product is a "fruit juice based drink" as per the erstwhile Entry No.71 in the Notification S.R.O No. 82 of 2006 which read as under:

71 Non-alcoholic beverages and their powders, concentrates and tablets including (i) aerated water, soda water, mineral water, water sold in sealed containers or pouches (ii) fruit juice, fruit concentrate, fruit squash, fruit syrup and fruit cordial (iii) soft drinks (iv) health drinks of all varieties (v) other non-alcoholic beverages; not falling under any other entry in this List or in any of the Schedules.

(1) Water not containing added sugar or other sweetening matter	
(a) Mineral water	*2201.10.10*
(b) Aerated water	*2201.10.20*
(2) Water containing added sugar or other sweetening matter	
(a) Aerated water	*2202.10.10*
(b) Lemonade	*2202.10.20*
(c) Other	*2202.10.90*
(3) Fruit juices and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	*2009*
(4) Fruit pulp or fruit juice based drinks	*2202.90.20*
(5) Soft drink concentrates	
(a) Sharbat	*2106.90.11*
(b) Other	*2106.90.19*
(6) Beverages containing milk	*2202.90.30*

Vide Notification S.R.O. No. 119 of 2008 dated 24th January 2008, the above said Entry was substituted as under:

71 Non-alcoholic beverages and their powders, concentrates and tablets in any form including;

(1) aerated water, soda water, mineral water, water sold in sealed containers or pouches
(2) fruit juice, fruit concentrates, fruit squash, fruit syrup and pulp and fruit cordial
(3) soft drinks other than aerated branded soft drinks
(4) health drinks of all varieties
(5) similar other products not specifically mentioned under any other entry in this list or in any other Schedules;

So the entry *Fruit Juice Based Drink* got subsumed in the residuary entry - *Similar other products not specifically mentioned under any other entry in this list or in any other schedule*. The above amendment has not changed or affected the basic character of the product. Therefore, the product remains classified under Entry No. 71 under Residuary Column No. (5)

b. The contention that the product is a fruit juice based drink is supported by the specifications contained in the erstwhile Fruit Product Order (FPO) which is presently known as Food Safety and Standards Act, 2006 and Food Safety and Standards (Food Safety and Standards and Food Additives) Regulations, 2011 which reads as under:

> *(a) The minimum content requirement is 10% of fruit juice as per the Food Safety and Standards Act, 2006 and Food Safety and Standards (Food Safety and Standards and Food Additives) Regulations, 2011 (para 2.3.10)*

Further according to the Ministry of Food Processing Industries, Government of India:

> *Ready to serve beverages including aerated waters containing fruit juice. The product should contain a minimum of 10% fruit juice. The product is commonly known as Fruit Drink.*

As per the permission dated 19th August 2015 issued by the Food Safety and Standards Authority of India, Ministry of Health and Family Welfare:

> *It is to inform you that you are now allowed to Manufacture, Store and Sale the product 'Appy Fizz' in pet bottles under the category 2.3.10 i.e. Thermally Processed Fruit Beverages / Fruit Drink/ Ready to Serve Fruit Beverages of Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011bwith name of the food item as Fruit Pulp or Fruit Juice based Drinks for which you are already holding a license.*

The applicant on the basis of the above would contend that the Ministry concerned has concluded that the product is a fruit juice based drink.

c. The applicant would also contend that the use of carbondioxide in the product is to preserve its contents from getting spoiled in transit and in storage and is meant for:

> *(a) To retain the shape of the packing of the Pet Bottle in which 'Appy Fizz' is packed.*
>
> *(b) Carbon dioxide is not used for the purpose of aerating the product as in the case of aerated waters within the meaning of the Entry.*
>
> *(c) According to the Institute of Chemical Technology:*
>
> *"Carbon dioxide ... is mentioned as a packing gas by ... CODEX ALIMENTARIUS and its use is allowed as per GMP.*

> *"Carbon dioxide ... helps in extending the shelf life of the product as per the product is filled in PET bottles and is not filled aseptically."*

d. The labelling is statutorily required on the packet as per Food Safety and Standards (Food Safety and Standards and Food Additives) Regulations, 2011 - 2.2.2: LABELLING OF THE PRE-PACKAGED FOODS. It is significant to note that there is no labelling requirement for aerated waters.

e. It is significant to note that there are specific restrictions on product label and particularly:

> *(5) Carbonated water containing no fruit juice or fruit pulp shall not have a label, which may lead the consumer into believing that it is a fruit product.*

So the label itself establishes that the product is considered by the Food Safety and Standards Act, 2006 as a fruit juice based drink and not as aerated / carbonated water.

f. The applicant would contend that there is other technical opinion supporting the claim that the product 'Appy Fizz' is a fruit juice based drink and not 'aerated branded soft drink. As per the Technical Expert Opinion of the Institute of Chemical Technology dated 11th June 2015:

> *In view of the above mentioned points, I am of the opinion that the APPY FIZZ is a THERMALLY PROCESSED FRUIT BEVERAGE / READY TO SERVE FRUIT BEVERAGE" ..... in spite having carbon dioxide as an ingredient which is used for preservation purpose only."*

g. In case of classification dispute with respect to the impugned product under Excise Act where the contention of the Central Excise was to classify the product as Aerated Water under Chapter Heading 22021010 and the contention of the Assessee was that the product is classifiable as Fruit Juice Based Drink under Chapter Heading 22029020 was before CESTAT in Appeal No. 3983 of 2006 preferred by Commissioner of Central Excise, Bhopal. In the said appeal, Hon'ble CESTAT held as under:

> *6. The revenue relied upon HSN Explanation Notes of Chapter 22, We find that our tariff is not fully aligned with the HSN Explanatory Notes. ..... The drinks based on fruit juice are specifically classifiable under Heading No. 2202.90.20 of the Tariff. In the present case, there is no dispute regarding the contents of the product. Revenue is not disputing the certificate given by the Ministry of Food and Processing Industries, New Delhi...and as per the certificate the product in question contains 23% of apple juice.*

h. The Civil Appeal filed by the Revenue against the said decision was dismissed by the Apex Court vide order dated 8th July, 2009.

i. The applicant would contend that it shows that the determination on merits by the Final Fact Finding Authority has been confirmed by the Hon'ble Supreme Court and there is therefore finality on the issue of the Nature of the Product.

j. The Excise Revenue Authorities independent of the aforesaid in assessment proceedings had decided the same issue. The Joint Commissioner, Chennai vide his Order No. 13/2005 dated 30.12.2005 has held that after re-grouping the product is to be classified as Fruit Juice Based Drink which is a specific entry under Chapter Heading 22029020 of Central Excise Tariff Act, 1985. The said order has not been challenged by Revenue and therefore attained the finality.

k. The Commissioner (Appeals), Bhopal in an identical case in Order-In-Appeal No. 208-CE/BPL/2006 concerning Appy Fizz independently on an examination of the Ministry of Food and Processing Industry's evidence dated 23rd August 2005 and other evidence and the evidence of the chemical examiner came to the following conclusion in paragraph 10.

> *There is no doubt that Appy Fizz having more than 10% of fruit juice is a fruit pulp or fruit juice based drink ....*
>
> *Here I would agree with the lower authority that carbonation of the fruit juice does not have a bearing on its classification under the Central Excise Tariff.*
>
> *Neither the tariff concerns itself will either the percentage of carbon dioxide for the exact function, it performs in the beverage i.e. preservation / carbonation / aeration.*

l. In another instance, the Hon'ble Commissioner of Central Excise (Appeals), Gurgaon has also by following the order of Hon'ble Tribunal has held that the product is classifiable as Fruit Juice Based Drink under Chapter Heading 22029020 vide his Order-In-Appeal No. 289/ ANS/PCK/2008 dated 8.12.2008.

4. The contentions raised in the matter have been examined and perused the relevant records. The cardinal issue raised by the applicant is the issue regarding rate of tax on 'Appy Fizz', which has been judicially settled by the Division Bench of the Hon'ble High Court of Kerala in the Case of M/s. Trade Lines, Ernakulam, a distributor of the applicant's product 'Appy Fizz', in O.T. Revision No. 114/2013 dated 17/11/2014. M/s. Trade Lines, Kalamassery, Ernakulam is a dealer borne on the rolls of the Office of the Commercial Tax Officer, Kalamassery. The assessing authority assessed the product 'Appy Fizz' at the rate of 20% by virtue of clause (a) of sub-section (1) of Section 6 of the Kerala Value Added Tax Act, 2003. The first appellate authority and STAT, Ernakulam confirmed the order passed by the Commercial Tax Officer, Kalamassery. In the O.T. Revision No. 114/2013 filed by M/s. Trade Lines against the decision of the Tribunal, the Division Bench of the Hon'ble High Court of Kerala decided the case as follows:

> *While listing out the products and indicating the rate of tax applicable, did not mention the HSN code, Going by the Rules of Interpretation, when the HSN number is not indicated in the statute or the notification issued thereunder, the interpretation should be on the basis of common parlance or commercial parlance. If the items listed out in Section 6(1)(a) are so interpreted, the only*

conclusion that is possible is that Appy Fizz, the product marketed by the petitioner, is an aerated soft drink as contemplated under Section 6(1)(a) of the KVAT Act.

The manner in which an entry should be understood in a case where HSN code is not incorporated in the statute is indicated in the Rules of Interpretation as contained in the Schedule to the KVAT Act. The relevant portion of this provision reads thus;

> *"The commodities in the schedules are alloted with Code Numbers, which are developed by the International Customs Organisation as Harmonised System of Nomenclature (HSN) and adopted by the Customs Tariff Act, 1975. However, there are certain entries in the schedules for which HSN Numbers are not given. Those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act, 1975. Those commodities, which are not given with HSN Number, should be interpreted, as the case may be, in common parlance or commercial parlance. While interpreting a commodity, if any inconsistency is observed between the meaning of a commodity without HSN Number, the commodity should be interpreted by including it in that entry which is having the HSN Number."*

From this, it is evident that those commodities in respect of which HSN Code number is not given, should be interpreted, as in common parlance or commercial parlance relied on by the learned counsel for the petitioner is concerned, that is an order passed in a dispute arising under the Central Excise and Salt Act, which is governed by the HSN Code numbers. Since HSN Code numbers are not relevant for the purpose of this case, interpretation given to similar entries in the context of the provisions contained in the Customs Tariff Act or the Central Excise Act cannot be called in aid to resolve a dispute of this nature, especially in the light of the Rules of interpretation contained in the Appendix to the KVAT Act. Therefore, we are not in a position to place any reliance on Annexures A or B orders of the Tribunal or the Apex Court.

M/s. Trade Lines moved the Hon'ble Supreme Court of India against the Judgment of the Hon'ble High Court of Kerala, but the same was withdrawn by them and therefore the SLP was disposed accordingly. By withdrawing the SLP, the dealer accepted the decisions rendered by the Apex Court. Based on the above decisions, assessments have been completed in the case of M/s. Reliant Marketing, Ernakulam - a dealer borne on the rolls of the Office of the Commercial Tax Officer, Second Circle, Thripunithura - a direct distributor of the product 'Appy Fizz' manufactured by the applicant company, for the years 2008-09 to 2013-14 assessing the commodity at the rate of 20%.

5. On a reading of the relevant entries, the product 'Appy Fizz' will not come under the Entry 'Fruit Juice based Drinks' having HSN Code 2202.90.20 as mentioned in sub-entry (4) of Entry 71 of S.R.O. No. 82/2006 as it stood before substitution of new Entry 71 as per S.R.O. No. 119/2008 dated 24/1/2008 (w.e.f 1/4/2007) since it was not aerated of carbondioxide. After the amendment brought

by S.R.O. No. 119/2008 dated 24/1/2008, 'Soft drinks other than aerated branded soft drinks' were included in sub-entry (3) of Entry 71. The Entry 'Fruit Juice based Drinks' having HSN Code 2202.90.20 have not subsumed in the sub-entry (5). Sub-entry (5) (as per S.R.O. No. 119/2008) excluded all the products specifically mentioned under any other Entry in the same list or any other Schedules. From 1/4/2007, as per the Finance Act – 2007, 'Aerated branded soft drinks' were taxable at 20% as per Serial No. 1(3) of the Table to clause (a) to sub-section (1) of Section 6. Since 'Aerated branded soft drinks' were included in the Schedule attached to clause (a) to sub-section (1) of Section 6 as per the Kerala Finance Act – 2007, it will not come under Entry 71 of S.R.O. No. 82/2006 as amended by S.R.O. No. 119/2008.

6. Therefore the points raised in the application for clarification is answered as follows:

1. The Department of Commercial Taxes, Kerala never classified the product 'Appy Fizz' as per the Central Excise Classification No. 2202.90.20 and not assessed the same at the tax rate of 12.5% or 13.5% or 14.5% at any time. As such, there is no question of substitution or subsumation of sub-entry (4) of Entry 71 to the new sub-entry (5) of Entry 71 as per the Notification S.R.O. No. 119/2008 dated 24/1/2008 (w.e.f. 1/4/2007). Hence the point is answered 'incorrect'.

2. Since the answer to point (i) is decided against the applicant, there is no relevance in answering point (ii) raised in the application.

3. With regard to point (iii) raised in the application, it is clarified that the products classified under clause (d) of sub-section (1) of Section 6 of Kerala Value Added Tax Act, 2003 are mutually exclusive of the products classified under clause (a) of sub-section (1) of Section 6 of Kerala Value Added Tax Act, 2003.

7. At the time of hearing, the learned counsel produced a copy of the order of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi dated 18/3/2008 and a copy of the Judgment in Civil Appeal No. 5354/2008 of the Hon'ble Supreme Court dated 8/7/2009 in support of the contentions raised by them. Both the above documents were filed before the Hon'ble High Court of Kerala in the Case of M/s. Trade Lines at the time of hearing, but the Hon'ble Court placed no reliance on them. (Annexure A & B appended to judgment dated 17.11.2014).

8. The above law declared by the Division Bench of the Hon'ble High Court of Kerala is binding on all authorities and hence this authority has no power to go beyond the decision either in initiating a proceeding or deciding on such an issue. The facts and circumstances of the present case

are identical to that of M/s. Trade Lines' case and the issue involved is the same. Hence the judgment is applicable to the matter in hand.

9. In view of the settled legal position and on account of the circumstances narrated above, it is hereby clarified that the product 'Appy Fizz' is an aerated soft drink taxable at the rate of 20% by virtue of clause (a) of sub-section (1) of Section 6 of Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**N. Thulaseedharan Pillai**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Joint Commissioner (General)**

To

M/s. Nagendran & Nagendran,
Advocates,
Sreepatham,
Krishnaswami Road,
Ernakulam, Kochi – 682 035.

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. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Tax liability on rent received for mounting flex boards on hoardings and amount received for undertaking wall paintings on walls taken on lease – Orders issued.

Read : Application from M/s. Drisya Advertising, Kochi dtd. 10/2/2014.

ORDER No.C3/5401/14/CT DATED 9/11/2015.

1. M/s. Drisya Advertising, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to the tax liability on rent received for mounting flex boards on hoardings and amount received for undertaking wall paintings on walls taken on lease.

2. The applicant is an advertising agency and is registered as a dealer in the Office of the Commercial Tax Officer (Works Contract), Ernakulam having TIN 32072039504. The applicant is engaged in the display of advertisement of clients through hoardings erected by them at various places and also by way of painting which

are in the nature of advertising services attracting Service Tax under the Union Finance Act, 1994.

3. The applicant has submitted that they have erected hoardings on top of buildings and on land taken on lease for the purpose of display of flex boards of products provided by persons or companies who want their products advertised. The applicant mounts these flex boards on hoardings for the purpose of display for which payments are received on sq. ft basis of the advertisement and the period of duration of display of the advertisement. In some cases, the applicant has to print flex board as per the design and colour scheme provided by clients.

4. The applicant submits that as per the terms and conditions of the agreement executed between the applicant and clients in case of any damage to the display material / poster / defacing of any manner, the applicant should arrange for repair or removal of the same immediately, and, if the period of damage exceeds beyond three days, it would be considered as non-display for which payment will be deducted accordingly. The applicant contends that from the above condition in the agreement, it is evident that the possession and control of the hoardings at all times rests with the applicant and it never passes over to the advertiser.

5. The applicant is also undertaking painting works on walls taken on rental basis by the applicant situated on the sides of national / state highways on which paintings showing the advertisement are to be done by them. The remuneration for the work is paid on sq. ft basis which is inclusive of site rent, painting charges, corporation / municipal taxes, other levies and any other incidental expenses to maintain the wall paintings. The applicant submits that under the presumption that for the services of display of advertisements on hoardings and wall paintings undertaken by the applicant there is tax liability under the provisions of the Kerala Value Added Tax Act, the applicant has been paying tax for the rent received from hoardings under 'transfer to right to use goods' and for the amount received from wall paintings under 'works contract'.

6. The applicant would contend that to come under the definition of 'sale' as provided in Section 2(xliii) of the Act for levying tax, there should be transfer of property in goods by one person to another person for valuable consideration. Therefore one of the essential and unavoidable ingredients to attract the definition of sale is that there should be transfer of goods and 'goods' as per Section 2(xx) of the Act means all kinds of movable property (other than newspapers, actionable claims, electricity stocks and

shares and securities) and includes live stock, all materials, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale. It is very clear that only movable properties come under the definition of goods and therefore immovable properties are excluded from the definition of goods. The Hon'ble High Court of Andhra Pradesh in Ad Age Outdoor Advertising Pvt. Ltd. Vs. Govt. of Andhra Pradesh & Ors. reported in (2011) 39 VST 323 had occasion to consider the question whether hoardings erected on top of buildings for advertisement purpose are movable property to levy tax under transfer of right to use goods under the provisions of the Andhra Pradesh Value Added Tax Act. The Hon'ble Court held that the test to determine whether hoardings are movable or immovable property is that whether such hoardings are detachable from the unipole / steel structure without causing any damage to the latter; and whether the unipole / steel structures are so deeply embedded in the earth as to constitute immovable property. If it falls under the first category, it is movable property and if it comes under the second category, it is immovable property on which no tax can be levied.

7. The applicant contends that the hoardings erected by them on top of buildings and on land are iron structures joined by the process of welding and fixed on top of buildings and embedded in earth on a semi permanent basis and these hoardings cannot be detached from the said places without considerable damage to these hoardings. It cannot be refixed at other locations as such and even if it is assumed that these materials can be used again for making hoardings it can be done only after doing enormous re-working on them. Therefore it falls under the category of immovable property taking it out of the definition of 'goods'.

8. The applicant would also contend that even if it is assumed by without admitting that hoardings are goods, still no tax can be levied under transfer of right to use goods for letting out hoardings for advertisement purposes. It is a settled law that for levying tax under the provisions of the Kerala Value Added Tax Act under 'transfer of right to use goods' U/s 6(1)(c), there should be delivery of goods from the lessor to the lessee. This position of law has been stated in the decision of the Hon'ble Supreme Court of India in Bharat Sanchar Nigam Ltd. & Anr. Vs. Union of India and Ors reported in (2006) 145 STC 91; (2006) 14 KTR 115. The Hon'ble Court in this decision has explained the dictum laid down in the Constitution Bench decision of the Hon'ble Supreme Court of India in 20th Century Finance Corporation Ltd. Vs. State of

Maharashtra reported in (2000) 119 STC 182. The Hon'ble Supreme Court in BSNL's case held as follows in Para 73 of the judgment.

> *"73. With respect, the decision in 20th Century Finance Corporation Ltd. Vs. State of Maharashtra cannot be cited as authority for the proposition that delivery of possession of the goods is not a necessary concomitant for completing a transaction of sale for the purposes of Article 366 (29A)(d) of the Constitution. In that decision, the Court had to determine where the taxable event for the purposes of sales tax took place in the context of sub-clause (d) of Article 366(29A). Some States had levied tax on the transfer of right to use goods on the location of goods at the time of their use irrespective of the place where the agreement for such transfer of right to use such goods was made. Other States levied tax upon delivery of the goods in the State pursuant to agreements of transfer while some other States levied tax on deemed sales on the premise that the agreement for the transfer of right to use had been executed within that State. This Court upheld the third view namely that the transfer of right to use took place where the agreements were executed."*

The applicant submits that the Hon'ble Supreme Court in BSNL's Case in unambiguous terms made clear that what the Constitution Bench in 20th Century Finance Corpn. Ltd's. Case (119 STC 182) was required to determine was as to where the taxable event for the purpose of sales tax takes place in the context of sub-clause (d) of Article 366 (29A) because the States had selected three distinct places for imposing sales tax and not whether transfer and delivery of possession of the goods was necessary for levying tax under Article 366(29A)(d) of the Constitution of India under deemed sales. The applicant would submit that Hon'ble Supreme Court in BSNL's Case made it very clear that *the proposition that for levying tax under transfer of right to use goods, delivery and possession of goods is not essential* as held in the decision of the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Union of India reported in (2003) 130 STC 1 is erroneous and observed as follows in para 75 of the Judgment.

> *"75. In our opinion, the essence of the right under Article 366(29A)(d) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting transfer of the right to use the goods but the goods must be available at the time of transfer must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use goods, the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods could not arise."*

9. The applicant would also contend that it has now become an established fact that for levying tax under transfer of right to use goods, delivery and possession of goods is an unavoidable requirement which cannot be dispensed with under any circumstance. The Hon'ble High Court of Karnataka in a recent decision in Indus Towers Ltd. Vs. Deputy Commissioner of Commercial Taxes, Enforcement – I, Bangalore and others reported in (2012) 56 VST 369 after considering almost all decisions rendered on this point so far by the Hon'ble Supreme Court of India came to the unassailable conclusion that for levying tax under transfer of right to use goods, delivery of

possession of goods is an unavoidable requirement. If the facts of the applicant's case are tested on the touchstone of the law laid down in all the above decisions, it can be seen that the applicant never hands over possession of hoardings to the customers and the applicant only mounts the advertisement of customers on the hoardings erected on top of buildings and land. In this regard, it is pertinent to note that in the agreements executed between the applicant and customers, there is a clause in the agreement to deduct proportionate amounts by the customer in the case of damage to the display material / poster / defacing of any manner. The petitioner had also an obligation to arrange for repair or removal of the advertisement immediately which makes it clear that customers have no control and they are not in possession of the hoardings. Therefore for the amount received as hoarding rent no tax is leviable U/s 6(1)(c) of the Act under 'transfer of right to use goods'.

10. The applicant would also contend that there is no tax liability under the provisions of the Act under 'works contract' also for wall paintings undertaken by them for advertisement of customers' products. On a perusal of the definition of 'works contract' as given in Sec.2(lv) of the Act, it is evident that a works contract is a contract wherein transfer of property in goods involved in the execution of works contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property in relation to such property. Therefore the definition of works contract requires three important parameters:

(a) performance of work,
(b) clients' property and
(c) transfer of goods.

The applicant would further contend that wall paintings undertaken by the petitioner is on walls taken on lease situated on the sides of national / state highways. On the basis of advertisement materials provided by customers, the applicant paints the advertisements on the walls for consideration to be given by customers on sq. ft. basis and also depending on the duration of advertising. The painting done by the petitioner is not on the property of the client but on the walls taken on lease by the petitioner. Therefore one of the essential requirements for levying tax under works contract namely transfer or property in goods by way of addition, accretion, accession or blending does not take place on the property of the customer thereby taking the painting work done

by the petitioner out of the purview of the definition of 'works contract'. There is no tax liability for the work of wall paintings under works contract.

11. The applicant would also contend that it is a settled law that there is no estoppel against a statute. If a person is not liable within the four corners of a statute to pay tax on any transaction, he cannot be assessed to tax merely because of the reason that he previously admitted his liability on a wrong notion. Liability to pay tax has always to be imposed by law; it cannot be imposed on admission. Article 265 of the Constitution is very clear on this point. This position of law has been stated in the decision of the Hon'ble High Court of Orissa in Sree International Finance Ltd. Vs. State of Orissa & Ors. reported in (2008) 16 VST 193. For the simple reason that the applicant had remitted tax for the above two items of services done to customers under a wrong presumption that the transactions are liable to tax under the provisions of the Act, it cannot be held that they are taxable.

12. The applicant would also contend that the mutual exclusivity of Service Tax and VAT is a settled position of law after the decisions of the Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd. & Anr. Vs. Union of India & Ors. reported in (2006) 145 STC 91; (2006) 14 KTR 115 and also in Imagic Creative Pvt. Ltd. Vs. Commissioner of Commercial Taxes & Ors. reported in (2008) 12 VST 371. The applicant was paying Service Tax on the full amount of hoarding rent received prior to the inclusion of selling of space of advertisement in the negative list as per Section 66D(g) of the Union Finance Act, 2002 w.e.f. 1/7/2002. The applicant has also been paying Service Tax for the full amount received for wall paintings undertaken by them treating it as service. Therefore in view of the mutual exclusivity of VAT and Service Tax, there is no tax liability under the provisions of the Kerala Value Added Tax Act on the above two items of work.

13. The applicant has requested to clarify the following points:

a. Whether there is tax liability U/s 6(1)(c) of the Act under 'transfer of right to use goods' for rents received for mounting flex boards of advertisements on hoardings erected by the petitioner?

b. Whether there is tax liability under 'works contract' falling U/s 6(1)(e) of the Act for the amount received for undertaking wall paintings on walls taken on lease?

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

15. It is hereby clarified that there is no taxable event under **'transfer of right to use'** in respect of the rent received for mounting flex boards of advertisements on the hoardings erected by the applicant. It is also clarified that there is no tax liability under **'works contract'** in respect of the amounts received for undertaking wall paintings on the walls taken on lease by the applicant.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

M/s. Rejith & Maju,
Chartered Accountants,
36/1118, Mohammed Kunju Vaidyar Lane,
Judges Avenue, Kaloor, Kochi – 17.

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 – Compounded works contractor and the rate of tax on suppressed turnover - Orders issued.

Read : Letter No. DC (I) K7.2004/14 of the Inspecting Assistant Commissioner (IB), Kozhikode dtd. 22/7/2014.

ORDER No.C3/22771/14/CT DATED 11/11/2015.

1. The Inspecting Assistant Commissioner (IB), Kozhikode has preferred a clarification U/s 94 of the Kerala Value Added Tax Act, 2003 seeking the rate of tax to be adopted in case of suppressed turnover in respect of works contract dealers who have opted compounding U/s 8(a).

2. The Inspecting Assistant Commissioner (IB), Kozhikode would submit that the third proviso to sub-clause (a) of Section 8 of the Kerala Value Added Tax Act, 2003 reads as follows w.e.f 1/4/2009:

> *Provided also that notwithstanding anything contained elsewhere in this Act, a works contractor who intends to pay tax at compounded rate in accordance with this clause in respect of all works undertaken by him during a year, may, instead of filing separate application for compounding for individual works, file a single option for payment of tax under this clause before 30th day of April of the year to which the option relates, subject to eligibility:*

The fourth, fifth and sixth proviso stipulates the rate for such option, in respect of works remaining un-executed for the end of financial year, and the rate to be adopted in respect of works that were commenced during previous years.

3. The Inspecting Assistant Commissioner (IB), Kozhikode would submit that he is seeking clarification in respect of those contractors who filed single option for payment of tax in respect of all works undertaken by him. If he suppress a portion of the contract amount received, what is rate of tax to be adopted, is it the rate as per sub-section 8(a) of the Act or the higher rate as per Section 6(1)(f) of the Act.

4. The contentions raised in the matter have been examined.

5. Compounded dealers having no CST registration are expected to purchase taxable goods to be incorporated in the work from local registered dealers. In the instant case, the total contract amount and the relevant purchase details were not disclosed to the Department. Hence, in cases of such wilfully suppressed turnover, the rate of tax applicable would be 12.5% or 14.5%, and not the compounded rate.

The issues raised above are clarified accordingly.

Joint Commissioner (A&I) **Joint Commissioner (Law)** **Joint Commissioner (General)**

To,

The Inspecting Assistant Commissioner (IB),
Commercial Taxes,
Kozhikode.

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. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Sale of goods to Non – CSD canteens - Orders issued.

Read : Application from Sri. P.J. Johney, Chartered Accountant, Kochi dtd. 12/9/2014.

ORDER No.C3/27464/14/CT DATED 11/11/2015.

1. Sri. P.J. Johney, Chartered Accountant, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax on the sale of goods to Non-CSD canteens as per the 5th proviso to Section 6(1)(ii)(a) of the Act.

2. The applicant has referred the Budget Speech, 2014 – 15 and the amended 5th proviso to Section 6(1)(ii) of the Act which as relevant to the context is extracted hereunder:

Provided also that, where, -

(a) the sale is to or by Canteen Stores Department, Central Police Canteen, Indian Naval Canteen Service and National Cadet Corps Canteen; or,

(b) the sale is by Military, Naval, Air Force or by the one subsidiary canteen each that may be established by the Kerala Police in each District of the State and affiliated to the Central Police Canteen, of the goods purchased from the Canteen Stores Department, Central Police Canteen or from direct suppliers authorised by them, as the case may be; and

(c) in case of motor vehicles, the sale is to Defence personnel or ex-servicemen on production of authorization duly issued by the authorized officer of the Canteen Stores Department, Indian Naval Canteen Stores or Air Force Canteen, as the case may be;

the tax payable under (a), (b) or (c) shall, subject to such conditions and restrictions as may be prescribed, be half the rate applicable to such goods.

3. The applicant has requested to clarify the rate of tax on sale of goods to Non CSD canteens as per the 5th proviso 6(1)(ii)(a) of the Act w.e.f. 1/4/2014.

4. The applicant was heard in the matter and the contentions raised were examined.

5. It is hereby clarified that as per the existing provisions of the Kerala Value Added Tax Act, 2003, sale of goods to Non-CSD canteens is not eligible for any concessional rate of tax, and is, therefore taxable at the rates prescribed under the respective Schedules.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. P.J. Johney FCA,
Johney & Co.
Chartered Accountants,
J & Co. Chambers, Manimala Road,
Edappally, Kochi – 24.

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 (General),
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. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Works contract and tax liability under the Act – Orders issued.

Read : Application from M/s. Graand Prix Elevators India Pvt. Ltd., Mumbai dtd. 29/11/2014.

ORDER No.C3/37679/14/CT DATED 17/11/2015.

1. M/s. Graand Prix Elevators India Pvt. Ltd., Mumbai has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on works contract and tax liability under the Act.

2. The applicant is located in Mumbai and is engaged in the business of sale, installation and service of elevators. The applicant imports elevators into India and sell it to their customers. It is sold either as an inter-state sale or as *"a sale in the course of*

import". In both the cases, invoices are raised from Mumbai declaring the transaction as a sale in the course of import or as an inter-state sale.

3. The applicant would submit that quotations are issued, separately, for the supply of elevators and charges for assembling and installation. Hence, two orders are placed by the customers- one for the *supply of elevator* and the second *for assembling and installing* the lift at the site. Installation part of the contract involves only a contract for labour. The applicant submits that as all the materials required for assembling and installation of the lift (materials, fasteners, cables etc.,) are packed with the parts of elevator at the country of origin, they do not procure any material from Kerala for assembling and installing the lift.

4. The applicant would submit that they do not undertake contract for civil works and/or electrification work. Scope of the contract does not include such works. These are to be done by the customers by engaging their own workers or engaging a contractor. Thus, the applicant does not execute any other work other than assembling and installation of the elevators.

5. The applicant would contend that Honourable Supreme Court of India had held in Kone Elevators [(2014) 71 VST 1 (SC)] case that if there are two separate contracts for purchase of components of lift from a dealer and for installation, same would be 'sale' and 'labour and service' respectively. The applicant has also relied upon on the judgments in State of Kerala Vs. Leo Hospital [2014 64 VST 158], Reliance Generators (P) Ltd. Vs. State of Kerala [1999 112 STC 456], Maestro Cooling Towers Vs. State of Kerala [1996 102 STC 617], and would contend that:

(a) A person can make an inter-state purchase of materials for his own use even if he does not hold registration under Kerala Value Added Tax Act, 2003 and that he will not be liable to pay tax under the Act;

(b) Execution of the order for supply of elevators will be an inter-state sale or a sale in the course of import and hence is not taxable under Kerala Value Added Tax Act, 2003.

(c) The separate contract for the installation without involving supply of materials for its installation is a labour contract and hence not liable for tax under the Act.

(d) They are not liable to tax under the Kerala Value Added Tax Act, 2003, and hence not liable for registering themselves as a dealer under the Act.

(e) The customer in Kerala need not deduct tax at source, U/s 10 of Kerala Value Added Tax Act, 2003, on the payment for supply of elevator and its installation as they are executed under separate contracts.

6. The applicant has requested to clarify the following points:

I. Whether purchase of goods *intended for own use,* either as an inter-state purchase or in the course of import, by a person residing in Kerala and not having registration under Kerala Value Added Tax Act, 2003, will attract liability for payment of tax under the Act on the value of goods so purchased either in his hands or in the hands of the supplier?

II. Whether the work of installation of elevators in Kerala, not involving supply of material procured from Kerala, will amount to a works contract liable to tax under the Kerala Value Added Tax Act, 2003?

III. Whether the activity of service and maintenance of elevators installed in Kerala, without involving supply of materials procured from Kerala, will amount to a works contract taxable under Kerala Value Added Tax Act, 2003?

IV. Whether the applicant's customers in Kerala are bound to deduct tax at source for the payments made to them for the supply part and installation part of the elevators?

V. Is the applicant bound to obtain registration as a dealer in Kerala under Kerala Value Added Tax Act, 2003 for carrying on the business/activities mentioned in the application?

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

8. The points on which the applicant has sought clarification are hereby clarified as under:

I. Purchase of goods, intended for own use, either as an inter-state purchase or in the course of import, by a person residing in Kerala and not having registration under the Kerala Value Added Tax Act, 2003, will not attract Value Added Tax under the said Act, on the value of goods so purchased either in his hands or in the hands of the supplier, provided the claim as to own use proved with tax suffered inter-state purchase bills and other statutory formalities complied with.

II. The work of installation of elevators in Kerala, not involving supply of materials procured from Kerala, though amounts to a works contract, the same is not exigible to tax under the Kerala Value Added Tax Act, to the extent proved by agreement and other evidences.

III. The activity of service and maintenance of elevators installed in Kerala, without involving supply of materials procured form Kerala, though amounts to works contract, the same is not taxable under the Kerala Value Added Tax Act, and to the extent proved with agreement and other evidences.

IV. The applicant's customers in Kerala are not bound to deduct tax at source for the payments made to the applicant for the supply part and installation part of the elevators, subject to the production of a non-liability certificate from the assessing authority.

V. The applicant is bound to take out registration under the Kerala Value Added Tax Act, 2003 for carrying on the activities mentioned in the application.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

Sri. C. Seshadri Nadan
Chartered Accountant,
City Lights Shopping Complex,
Vadakkencherry – 678 683.

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 – Rate of tax of Branded and Un-branded skimmed Milk Powder– Orders issued.

Read : 1. Application from M/s. Sakthi Automobiles, Kozhikode, dtd. 28/10/2015.
2. Letter No. SA/2015-16 of M/s. Sakthi Automobiles, Kozhikode, dtd. 28/10/2015.

ORDER No.C3/36827/15/CT DATED 19/11/2015.

1. M/s. Sakthi Automobiles, Kozhikode, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the following points:

i. Rate of tax of Branded skimmed milk powder

ii. Rate of tax of Un-branded skimmed milk powder

The applicant vide their letter read as paper 2nd above has informed that they do not intend to avail any personal hearing and has requested to dispose off the application on merits basis.

2. The issue raised have been examined.

3. *Skimmed Milk* which is *in powder, granules or other solid forms, of a fat content, by weight not exceeding 1.5%* is classified under the *HSN 0402.10.10* of the Customs Tariff Act. The said HSN Code is included in Entry 118 of the Third Schedule to the Kerala Value Added Tax Act, 2003, which reads as follows:

118	***Skimmed milk powder and UHT milk***	***0402.10.10***

4. As such, it is hereby clarified that branded and un-branded skimmed milk powder, of a fat content, by weight not exceeding 1.5% classified under the HSN Code 0402.10.10 would be exigible to Value Added Tax at the rate of 5% by virtue of Entry 118 of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**N. Thulaseedharan Pillai**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Joint Commissioner (General)**

To

M/s. Sakthi Automobiles,
23/398, Meenchanda,
P.O Calicut Arts & Science College,
Kozhikode – 673 018.

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 (General),
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 semi-cooked chappathi which is sold under a brand name not registered under the Trade Marks Act, 1999 – Orders issued.

Read : Application from M/s. Tian Enterprises, Kochi dtd. 16/4/2015.

ORDER No.C3/14628/15/CT DATED 23/12/2015.

1. M/s. Tian Enterprises, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of semi-cooked chappathi which is sold under a brand name not registered under the Trade Marks Act, 1999.

2. The applicant is borne on the rolls of the Office of the Commercial Tax Officer, 2nd Circle, Thripunithura and is making chappathi, which is prepared by adding whole wheat, refined oil, salt & water and is cooked to 100 Degree Celcius before packing.

When taken home, it needs only to be slightly heated on a tawa before consuming for better taste. It has a maximum shelf life of two days. The applicant has requested to clarify the rate of tax of the commodity and also as to whether they are eligible for compounding.

3. The applicant was heard in the matter and the contentions raised were examined.

4. Entry 7 of the Third Schedule to the Kerala Value Added Tax Act, 2003 takes within its ambit Bakery products, sweets, confectionery and ***other food products*** other than those sold under brand name registered under the Trade Marks Act, 1999.

5. The applicant's product has a brand name viz. 'Yummy Pan' chappathi which is not registered under the Trade Marks Act, 1999. Semi-cooked chappathi being a food product, and in the impugned case the brand name being not registered under the Trade Marks Act, 1999, it is hereby clarified that the applicant's product 'Yummy Pan' chappathi would be taxable at the rate of 5% by virtue of Entry 7 of the Third Schedule to the Kerala Value Added Tax Act, 2003.

6. Section 8(c)(i) is applicable only in the case of cooked food prepared and served in restaurants and hotels. Since the applicant's product does not fall under that category, it is clarified that the applicant is not eligible for payment of tax at compounded rates.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**N. Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

M/s. Tian Enterprises,
38/2484, Gandhi Nagar,
Ernakulam, Kochi – 682 017.

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. 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 – Inter-state supply of kanikka vanchies and TDS - Orders issued.

Read : Application from M/s. Craft It Metal Solutions, Chennai dtd. 10/9/2015.

ORDER No.C3/32579/15/CT DATED 23/12/2015.

1. M/s. Craft It Metal Solutions, Chennai has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether tax is to be deducted at source on inter-state supply of customised kanikka vanchies.

2. The applicant is a registered dealer (TIN - 33151367127 & CST No. 1015193) under Tamil Nadu Value Added Tax Act, 2006 and is situated in the State of Tamil Nadu. The applicant would submit that they have entered into an agreement with the Executive

Engineer, Estate Division, Travancore Devaswom Board, Thiruvananthapuram (awarder) for the supply of customised goods (stainless steel type kanikka vanchies) from Tamil Nadu to various places in the State of Kerala. The supply of goods is with the support of Invoices billed from Tamil Nadu showing CST collection @ 5%. The applicant would contend that due to the following reasons, deduction of tax at source is not applicable in the impugned case:-

- *As per Section 10, only if the contractor is liable to pay tax U/s 6 of the Kerala Value Added Tax Act, 2003, the applicability of TDS will arise.*
- *The supply of goods is from Tamil Nadu and hence it is not coming under the purview of Kerala Value Added Tax Act, 2003 .Therefore, Section 6 of the Act is not applicable to the applicant.*
- *No transaction (sale/purchase/works contract) is executed within the State of Kerala to attract taxability under Kerala Value Added Tax Act, 2003. Sale or purchase in the course of inter-state trade or commerce is subject to tax according to the CST Act, 1956*
- *As per Section 6 of the CST Act, 1956 every dealer shall in the case of an inter-state trade or commerce effected by a dealer, be liable to pay tax under the CST Act, 1956 and is not liable under Kerala Value Added Tax Act, 2003.*
- *As per Invoice, being interstate sales, CST has already been charged on value of goods supplied. KVAT and CST are not applicable at a time on the same turnover.*

3. The applicant has requested to clarify whether deduction of tax at source U/s 10 of the Kerala Value Added Tax Act, 2003 is applicable or not in the instant case.

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

5. The transaction involved in the impugned case is inter-state supply of customised kanikka vanchies. A perusal of the documents produced by the applicant would show that the impugned contract is only a supply contract. As such, it is hereby clarified that there is no liability to deduct tax at source U/s 10 of the Kerala Value Added Tax Act, 2003 on the impugned transaction.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	N. Thulaseedharan Pillai	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

Sri. Rajan K.
VXJC, 44/1656 B(2), II Floor,
VXJC House – Audit Centre,
V.K.M Road, Kaloor,
Kochi – 17.

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 (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 printed photographs in book form – Orders issued.
Read : Application from M/s. Colortone Process Pvt. Ltd., Kochi dtd. 11/11/2015.

ORDER No.C3/36373/15/CT DATED 6/1/2016.

1. M/s. Colortone Process Pvt. Ltd., Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of printed photographs in book form.

2. The applicant is engaged in the printing and sales of printed materials such as calendars, booklets, brochures, printed photographs in book form etc. People would bring photographs to the applicant's press in CDs or pen drives. The applicant takes printouts in their press and returns it in book form. The applicant receives printing charges and cost of materials for the same. The applicant submits that there is a dispute regarding the rate of tax of this commodity.

3. The applicant would contend that printed photographs in book form can easily be differentiated from photo and stamp albums falling under Entry 77(6) of the Notification S.R.O. No. 82/2006. Photo album is a book in which photos are mounted on the respective pages while printed photographs in book form is in essence photographs printed on papers in printing press and then bound in book form. Both are ex-facie different in nature, in their production line and in common parlance or commercial parlance. The applicant would also submit that the common characteristic of the items in Entry 77 of the Notification is that it can be used by any person at any time and it is always available in the market as an item ready to sell. It is not supposed to be sold to a particular person for his exclusive use. On the other hand, the items which come under Entry 100 are printed materials meant for a particular person as per the specification given by them.

4. The applicant contends that the product would fall under Entry 100(5) of the Third Schedule to Act and has requested to clarify the rate of tax of the commodity.

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

6. The applicant's request is to clarify the rate of tax of printed photographs in book form. An 'album', as understood in the traditional sense, or as per commercial parlance, is a book in which photographs, stamps etc. are kept. The HSN Code appearing in Entry 77(6) of S.R.O. No. 82/2006 is 4820.50.00. The impugned HSN Code takes within its ambit ***Albums for samples or for collections*** which is different from the product dealt with by the applicant. As such the applicant's product is not includible in the above said Entry.

7. In the impugned case, the applicant is printing photographs in book form. This particular commodity is includible in Entry 100(5) of the Third Schedule to the Kerala Value Added Tax Act, 2003 which reads ***Other printed matter, including printed pictures and photographs*** with HSN Code 4911. When any goods can reasonably be covered under a specific entry, then resort to residuary entry is not necessitated.

8. As such, it is hereby clarified that the commodity printed photographs in book form would be exigible to VAT at the rate of 5% by virtue of Entry 100(5) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**N. Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

CA. Stanley James FCA,
Chartered Accountants,
M/s. Saju & Co.,
39/4751, M.G. Road,
Kochi – 16.

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 (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%***

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%***

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. 'thermocol 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	**N. Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

M/s. S. Anil Kumar, K.S. Hariharan & K. Umamaheswar,
Advocates,
Haridev buildings, Old Railway Station Road,
Kochi – 682 018.

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. 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 – Whether all types of rubber wood including sizes are exempt from tax – Orders issued.

Read : Application from M/s. Elayadath Bricks & Wood Industries, Kozhikode dtd. 13/5/2015.

ORDER No.C3/16717/15/CT DATED 28/3/2016.

1. Sri. E. Abdul Majeed, M/s. Elayadath Bricks & Wood Industries, Kozhikode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether all types of rubber wood including sizes are exempt from tax by virtue of Entry 42C of the First Schedule to the Act.

2. The applicant is borne on the rolls of the Office of the Commercial Tax Officer, 4th Circle, Kozhikode and is engaged in the purchase and sale of rubber wood. Rubber wood purchased locally is sawn into sizes and is sold inter-state. The applicant has referred Entry 42C of the First Schedule to the Act whereby rubber wood was exempted from tax. The applicant would contend that all types of rubber wood are exempt from tax by virtue of the above said entry. But certain authorities are insisting that the applicant collect tax since their product is a taxable commodity. The applicant has requested to clarify whether all types of rubber wood including sizes are exempt from tax.

3. The applicant was heard in the matter and the contentions raised were examined.

4. The purport of Entry 42C of the First Schedule to the Act has to be examined in the light of the Budget Speech, 2015. The intention behind introducing the above said Entry was to exempt rubber wood from tax so as to ease the movement of rubber wood.

5. To understand better the scope of the above said Entry, it would be relevant to refer to the legal interpretation of the term 'wood'. As per 'The Advanced Law Lexicon' by Sri. P. Ramanatha Aiyar, the term ***'wood' means and includes trees when they have fallen or have been felled and all wood of any species whether cut, converted, fashioned, sawn or hollowed out for any purpose or not***.

6. In the light of the facts stated supra, it can safely be concluded that the intention of the legislature was apparently to exempt all sizes and shapes of rubber wood. As such, it is hereby clarified that all sizes and shapes of rubber wood are exempt from tax by virtue of Entry 42C of the First Schedule to the Kerala Value Added Tax Act, 2003, provided it is not subjected to any further processing.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	N. Thulaseedharan Pillai	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

Sri. E. Abdul Majeed,
M/s. Elayadath Bricks & Wood Industries,
14/351, Cheruvannur Srambiya,
P.O. Kolathara, Kozhikode.

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 (A&I),
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. 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 Waterguard Roofcoat – Orders issued.

Read : 1. Application from Sri. P.J. Johney, Chartered Accountant, Kochi dtd. 15/1/2015.

2. This Office letter of even No. dtd. 21/7/2015 addressed to the Superintendent, Central Excise & Customs, Range - V, Division – II, Vadodara – I

2. Letter No. R-V/DN.II/Misc/Fairmate Chemicals/15-16 of the Superintendent, Central Excise & Customs, Range - V, Division – II, Vadodara – I dtd. 6/8/2015.

ORDER No.C3/2406/15/CT DATED 28/3/2016.

1. Sri. P. J. Johney, Chartered Accountant, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodity 'Waterguard Roofcoat'.

2. The applicant would contend that the commodity named 'Waterguard Roofcoat' made out of Acrylic Polymer is used to prevent leakage in concrete roofs. The applicant would further contend that the material is covered under the HSN Code 3906 and has produced a copy of the letter issued by the Superintendent, Central Excise & Customs, Range-V (Padra), Div-II, Vadodara- I to support his case. According to the applicant, the product is listed under Item Code 118(6) of the Third Schedule with HSN Code 3906. The applicant has requested to clarify the rate of tax of the commodity.

3. The applicant was heard in the matter and the contentions raised were examined.

4. The matter was taken up with the Superintendent of Central Excise & Customs, Vadodara – I vide letter read as paper 2nd above to ascertain the HSN

Code applicable to the impugned product. Now, the Superintendent of Central Excise & Customs, Range - V, (Padra), Division - II, Vadodara – I vide his letter read as paper 3rd above has informed that ***the product WATER PROOFING Compound (HSN:3824) is made out of Acrylic Polymer*.**

5. A perusal of the said letter would show that the Central Excise authorities have apparently classified the impugned product under the HSN 3824; and Acrylic Polymer having HSN 3906 is used in the manufacture only as an ingredient. Since the Central Excise authorities have classified the impugned commodity under the HSN 3824, classification under any other HSN Code is not warranted. Neither the four digit HSN *3824* nor the eight digit HSN *3824.40.10* which reads ***Damp proof or water proof compounds*** appear in any of the Schedules to the Kerala Value Added Tax Act, 2003.

6. In view of the facts stated supra, it is hereby clarified that the commodity 'Waterguard Roofcoat' classified under the HSN 3824 would be taxable at RNR by virtue of Entry 103 of S.R.O. No. 82/2006, as applicable from time to time.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. P.J. Johney FCA,
M/s. Johney & Co.
Chartered Accountants,
J & Co. Chambers, Manimala Road,
Edappally, Kochi – 24.

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. 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 plastic planters – Orders issued.

Read : Application from M/s. Family Plastics & Thermoware (P) Ltd., Thiruvananthapuram, dtd. 4/8/2014.

ORDER No.C3/23376/14/CT DATED 29/3/2016.

1. M/s. Family Plastics & Thermoware (P) Ltd., Thiruvananthapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodity plastic planters i.e. pots for agricultural use.

2. The applicant is manufacturing and distributing plastic injection moulded house hold articles, furniture, garden pots etc. The applicant contends that plastic garden pots and its trays are used for agricultural and horticultural purpose. The applicant submits that these are included in the KVATIS commodity list as goods taxable at RNR. The applicant has requested to clarify the rate of tax of the above said commodity.

3. The applicant was heard in the matter and the contentions raised were examined.

4. The impugned commodity i.e. plastic planters is not seen included in any of the Schedules to the Kerala Value Added Tax Act, 2003. Further, the commodity cannot be included under Entry 1 of the First Schedule viz. **Agricultural implements manually operated or animal driven** or in Entry 1 of the Third Schedule viz **Agricultural and Horticultural implements not operated manually or not driven by animal and parts thereof,** since the impugned product is commercially different from the commodities mentioned in the sub-entries thereto. Likewise the commodity

cannot be included in Entry 19 of the Third Schedule viz. **Buckets made of iron and steel, aluminium, plastic or other materials (except precious metals)**, Entry 33 of the Third Schedule viz. **Cups and tumblers of paper and plastic**, Entry 137(12) of the Third Schedule viz. **Tableware and kitchenware of plastics with HSN 3924.10** or in Entry 174 of the Third Schedule - List A viz. **Packing materials of all kinds, articles for conveyance or packing of goods of plastics, wood, paper, glass, jute; cartons, boxes and their waste, sacks and bags**.

4. In view of the above facts, it is hereby clarified that the commodity plastic planters - pots for agricultural use would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

M/s. Family Plastics & Thermoware (P) Ltd.,
T.C. 3/1148(3),
Industrial Development Plot No. 54,
Monvila, Kulathoor P.O,
Thiruvananthapuram – 695 583.

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. 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 interlock mud blocks – Orders issued.

Read : Application from M/s. Anju Interlock Bricks, Dhanuvachapuram dtd. 18/2/2015.

ORDER No.C3/5847/15/CT DATED 30/3/2016.

1. Smt. Rose Kamala Bai, M/s. Anju Interlock Bricks, Dhanuvachapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodity interlock mud blocks.

2. The impugned commodity is manufactured using sand/dust of laterite stone and rubber latex. The commodity is produced through compression by using a hydraulic machine. The applicant would contend that the commodity is taxable at the rate of 5% and has requested to clarify the rate of tax of the commodity.

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

4. Bricks of all kinds are included under Entry 18 of the Third Schedule to the Kerala Value Added Tax Act, 2003. The intention of the legislature is to bring all kinds of bricks/blocks under the tax rate of 5% regardless of the manufacturing process involved.

5. The Hon'ble High Court of Kerala in its decision in State of Kerala Vs. Monies Roofing (P) Ltd. [23 KTR 527] had, by relying on the decision of the Apex Court in Gujarat Steel Tubes' Ltd. case, held that *the process undertaken by the assessee is to subject kiln burnt roofing tiles to a mechanical process whereby colour coating is given to the tiles. After that process also the product is used as roofing tiles.* The case in hand is

similar to the above. Even though some other mechanical processes are involved in this case, it continues to be brick.

6. In view of the facts stated supra, it is hereby clarified that the commodity interlock mud blocks would be taxable at the rate of 5% by virtue of Entry 18 of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. Waltor Manoharam B.
Anju Bhavan, Chirathalavilakom,
Dhanuvachapuram P.O.

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., Vyttla, Kochi dtd. 26/11/2014.

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

1. M/s. Yum! Restaurants (India) Pvt. Ltd., Vyttla, 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 leviable 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 leviable 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 slided 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.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**N. Thulaseedharan Pillai**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Joint Commissioner (General)**

To,

Adv. K.M. Cherian,
EMCEE & Co.,
39/4664A(3B), First Floor,
Karimpatta Road, Pallimukku,
Kochi – 682 016.
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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 – Rate of tax on boilers, thermic fluid heaters and hot water generators – Orders issued.

Read : 1. Application from M/s. Cinzac Sales & Services Pvt. Ltd, Kochi dtd. 21/6/2006.
2. Order No. C7.28881/06/CT dtd. 12/8/2006.
3. Judgment in O.T.A. No. 3 of 2008 of the Hon'ble High Court of Kerala dtd. 15/2/2008.
4. This Office Notice No. C7.28881/06/CT dtd. 15/3/08 & 9/4/08.
5. This Office Notice No. C3/28881/06/CT dtd. 5/11/2014.
6. This Office Notice No. C3/28881/06/CT dtd. 26/8/15 & 29/2/16.

ORDER No.C3/28881/06/CT DATED 7/4/2016.

1. M/s. Cinzac Sales & Services Pvt. Ltd, Kochi vide their application in Form No. 24 read as paper 1st above 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 boilers, thermic fluid heaters and hot water generators.

2. Accordingly, the Commissioner of Commercial Taxes after hearing the applicant, vide the order read as paper 2nd above clarified that:

> *Admittedly Boilers and Hot Water Generators come under HSN Code 8402 and 8403 respectively. All commodities coming under the said HSN are classified as entry 60(2) and 60(3) of SRO 82/06 taxable at 12.5 %.*
>
> *As regard to `Thermic Fluid Heaters' admittedly coming under HSN 8419.89.90 has not been specifically mentioned in any of the schedules to KVAT Act 03. Hence it will fall under the residual entry 103 of SRO 82/03 taxable at 12.5 %.*

3. Aggrieved by the above said order, the applicant preferred an appeal before the Hon'ble High Court of Kerala. The Hon'ble High Court in its judgment read as paper 3rd above observed that:

> *' nowhere in the order the Commissioner has even referred to the contentions of the applicant nor is there any reference to consideration of all these contentions. A quasi-judicial authority, when he frames an order, he is expected to notice the contentions by assigning appropriate*

reasons. Since the order passed in the instant case does not have these ingredients, the impugned order is not only arbitrary, but also violative of Article 14 of the Constitution of India.

The Hon'ble Court set aside the Order and remanded the matter to the Commissioner to re-do the matter in accordance with law.

4. Accordingly the matter was re-heard by the Commissioner of Commercial Taxes on 17/4/2008 and was once again heard on 13/11/2014 by the competent authority U/s 94 of the Kerala Value Added Tax Act, 2003. The matter could not be disposed off due to the subsequent changes in the members constituting the Authority for Clarification who heard the application and hence the case was re-posted for hearing vide Notices read as paper 6 above. Neither the applicant nor the authorised representative attended the hearing. In view of the above facts and taking into consideration the direction of the Hon'ble High Court, this authority has decided to dispose the matter on merits after examining the documents furnished by the applicant.

5. The applicant is a dealer in products manufactured by Thermax Ltd., Pune and these products are subjected to the levy of Central Excise. The applicant filed the application for obtaining a clarification as to the rate of tax payable under Kerala Value Added Tax Act, 2003, for the following commodities:

Boilers	8402.12.00
Hot Water Generators	8403.10.00
Thermic Fluid Heaters	8419.89.90

Boilers sold under the brand name HUSKPAC, is a machine used by rice mills to produce steam. Steam is required, by rice mills, for boiling paddy. This machine uses rice husk as fuel. Hot water generator is a machine for heating water and is used by hotels and hospitals. Hot water generator uses diesel fired burners to heat water from room temperature to the required temperature of about 50 – 60^{O}C. Thermic fluid heater is also a machine and is an alternative to steam boilers. It uses diesel or wood as fuel and is used by rubber based manufacturing units, in manufacturing process.

6. The applicant would contend that a perusal of Entry 83 of the Third Schedule discloses that there is a conflict between Entry 83(59) of the Kerala Value Added Tax Act and the HSN Code mentioned in the Schedule.

7. The applicant contends that as boilers and hot water generators (HSN Code 8402.12.00 and 8403.10.00 respectively) are covered by the term BOILERS (specifically mentioned in sub-entry 59 of Entry 83) and the HSN Code 8514 applies only to FURNACE, it is to be held that HSN Code 8514 applies to/qualifies only Furnace and does not apply to/qualify boilers. It is pertinent to note that

sub-entry 59 of Entry 83 specifically refers to 'boilers of all types' and description of boilers is given in detail in this sub-entry. The Rules of Interpretation of Schedules also supports this. In the above situation, the first two products, recognized as Boilers under Excise Tariff Act, should be held as covered by Entry 83(59) of Third Schedule to the Kerala Value Added Tax Act.

8. With regard to thermic fluid heaters covered by the HSN Code 8419.19.20, the applicant would contend that the description of the same in Central Excise Tariff Act is exactly similar to sub-entry (1) of Entry 83 of the Kerala Value Added Tax Act. So, thermic fluid heaters may also be held to be covered by Entry 83 of Third Schedule to the Act.

9. The applicant would contend that Entry 83 or the Heading of Third Schedule or for that matter the provisions of Kerala Value Added Tax Act, 2003 do not lay down that the main entry contains/takes into its fold only the sub-entries mentioned under each main entry. In fact, wherever the legislature wanted to include or exclude a particular product from an Entry of the Schedules to the Act, it has been so stated in the Rules of Interpretation of Schedules. In such a situation, the only possible interpretation is that various items mentioned under each entry (i.e. sub-entries) are only indicative. The main entry cannot be restricted only to the goods mentioned in the sub-entries under each entry. If so, all the three products, which are subject matter of this application, are to be held as machines and hence covered by Entry 83 and are liable to be taxed at 4%.

10. The applicant has also submitted that Entry 60 of S.R.O.No.82/2006 should not be interpreted in such a way as to include boilers referred to in Entry 83 of Third Schedule for the reason that a commodity that falls under any of the Schedules to the Act cannot be treated/notified as an unclassified item and thereby subjected to tax at 12.5%.

11. The applicant had at the time of hearing submitted that the application may be amended by incorporating the HSN Code of thermic fluid heaters as 8419.19.20 and has requested to clarify the rate of tax of the commodities.

12. A perusal of the Customs Tariff Items 8402, 8403 and 8514 would be relevant in order to settle issues involved in the matter. The HSN Codes, as relevant to the context, is extracted hereunder:

8402	***STEAM OR OTHER VAPOUR GENERATING BOILERS (OTHER THAN CENTRAL HEATING HOT WATER BOILERS CAPABLE ALSO OF PRODUCING LOW PRESSURE STEAM); SUPERHEATED WATER BOILERS***
	- Steam or other vapour generating boilers:
8402 11 00	*-- Water tube boilers with a steam production exceeding 45 t per hour*
8402 12 00	*-- Water tube boilers with a steam production not exceeding 45 t per hour*
8402 19	*-- Other vapour generating boilers, including hybrid boilers:*

8402 19 10	*--- Fire tube horizontal (lancashire) boilers*
8402 19 20	*--- Fire tube boilers*
8402 19 90	*--- Other*
8402 20 00	*- Super-heated water boilers*
8402 90	*- Parts:*
8402 90 10	*--- Parts of fire tube boilers*
8402 90 20	*--- Parts of water tube boilers*
8402 90 90	*--- Other*

8403	***CENTRAL HEATING BOILERS OTHER THAN THOSE OF HEADING 8402***
8403 10 00	*- Boilers*
8403 90 00	*- Parts*

8514	***INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS (INCLUDING THOSE FUNCTIONING BY INDUCTION OR DIELECTRIC LOSS); OTHER INDUSTRIAL OR LABORATORY EQUIPMENT FOR THE HEAT TREATMENT OF MATERIALS BY INDUCTION OR DIELECTRIC LOSS***
8514 10 00	*- Resistance heated furnaces and ovens*
8514 20 00	*- Furnaces and ovens functioning by induction or dielectric loss*
8514 30	*- Other furnaces and ovens:*
8514 30 10	*--- For melting*
8514 30 90	*--- Other*
8514 40 00	*- Other equipment for the heat treatment of materials by induction or dielectric loss*
8514 90 00	*- Parts*

13. The applicant deals in various types of boilers like smoke tube steam boiler, multi-fuel fired steam boiler, Multi-max (the rugged, multi-fuel, smoke tube shell type boiler), rice husk fired, packaged smoke tube steam boiler etc. An examination of the catalogues produced by the applicant would show that the type of boilers dealt with by the applicant would rightly be classifiable under the HSN 8402 and it has been admitted by the applicant also. Hence the commodity would be taxable at RNR by virtue of Entry 60(2) of the S.R.O. No. 82/2006.

14. Thermic fluid heaters are not specifically covered by any of the Entries in the Third Schedule to the Act or for that matter, in any of the Schedules to the Act. The HSN code of the product is admittedly 8419.89.90 and it does not appear in any of the Schedules to the Act. Hence it can safely be concluded that, complex machinery, like the one under consideration herein, which is used in industrial and commercial establishments, would be exigible to VAT at RNR by virtue of Entry 103 of S.R.O. No. 82/2006.

15. A hot water generator is akin to a boiler. Hot water generators dealt with by the applicant has both domestic and industrial applications. This commodity is not specifically mentioned in any of the Schedules to the Act. The HSN Code of the product is 8403 which does not appear in any of the Schedules to the Act. As such, it is hereby clarified that the commodity hot water

generators classified under the HSN 8403 would be taxable at RNR by virtue of Entry 60(3) of the S.R.O. No. 82/2006.

16. The issues raised above are clarified as stated supra and the direction contained in the Hon'ble High Court's judgment is hereby complied with.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**N.Thulaseedharan Pillai**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Joint Commissioner (General)**

To,

Sri. Joseph Zacharias,
Managing Director,
M/s. Cinzac Sales & Services Pvt Ltd.,
Cinzac Towers, Chittoor Road,
Pachalam, Kochi – 682 012.

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. 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 machine made washing soaps by using coconut oil – Orders issued.

Read : Application from M/s. Limar Global Hygienics LLP, Kannoth, Kozhikode dtd. 30/10/2014.

ORDER No.C3/32594/14/CT DATED 7/4/2016.

1. M/s. Limar Global Hygienics LLP, Kannoth, Kozhikode has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of machine made washing soaps by using coconut oil.

2. The applicant has requested to clarify whether they are entitled to collect VAT at the rate of 1% by virtue of Entry 2D of the Second Schedule to the Act.

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

4. Entry 2D of the Second Schedule to Kerala Value Added Tax Act, 2003 reads:

2D	***Washing soap bars and cakes manufactured using coconut oil***	**********

The Entry does not specify/differentiate between machine made/handmade soaps. All types of washing soap bars and cakes manufactured using coconut oil are included under the above said Entry.

5. In view of the facts stated supra, it is hereby clarified that the applicant's commodity i.e. machine made washing soap manufactured by using coconut oil would be exigible to VAT at the rate of 1% by virtue of Entry 2D of the Second Schedule to the w.e.f 1/4/2014.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. M. Krishnadas,
General Manager,
M/s. Limar Global Hygienics LLP,
8/562, Kalappuram, Kannoth P.O,
Kozhikode – 673 580.

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. 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 tyre re-treading – Orders issued.

Read : Application from M/s. Ooppoottil Tyre Re-treading, Menamkulam, Thiruvananthapuram dtd. 18/6/2015.

ORDER No.C3/21710/15/CT DATED 7/4/2016.

1. Sri. Thomas Kurien, M/s. Ooppoottil Tyre Re-treading, Menamkulam, Thiruvananthapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax on tyre re-treading.

2. The applicant is engaged in the business of pre-cured tyre re-treading by purchasing pre-cured tread rubber by paying VAT @ 5%. The applicant would contend that their business comes under the heading works contract under repairs and maintenance. The applicant has been paying VAT on total turnover by opting compounding. From the year 2015-16 onwards, the applicant intends to avail IPT credit on VAT. The applicant is also paying Service Tax on labour/service portion of the Bill. The applicant has requested to clarify the rate of VAT to be collected in the above instance.

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

4. The applicant undertakes tyre re-treading works. It is a type of works contract where the transfer of goods involved in the execution of the contract is not in the form of goods, but in some other form. As per the Table to clause (b) of sub-rule (2) of Rule 10, in the case of tyre re-treading contracts, the labour charges allowable in cases where the books of accounts are not maintained is 50% of the value of the contract. From the above, it can safely be concluded that

the intention was not to include the above work in the category 'transfer in the form of goods'. As such, as per Section 6(1)(f) of the Kerala Value Added Tax Act, 2003, the applicant shall be liable to pay tax at the rate of 14.5% on the transfer value of goods. It being so, the applicant can avail input tax credit on local taxable purchases. Further when a dealer pays tax as per accounts, since labour portion is exempt from VAT and Service Tax is payable on the labour portion, Value Added Tax will not be applicable on the Service Tax paid.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	Dr. A. Bijikumari Amma	V.J. Gopakumar
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. Joseph V.E.
Valomtharayil, Amboori P.O,
Kattakada, Thiruvananthapuram.

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 – Whether transaction of goods between own units of MRCMPU having different TIN and same PAN is taxable or not – Orders issued.

Read : Application from M/s. Malabar Regional Co-operative Milk Producers' Union, Kunnamangalam, Kozhikode dtd. 8/2/2016.

ORDER No.C3/5444/16/CT DATED 13/4/2016.

1. M/s. Malabar Regional Co-operative Milk Producers' Union (MRCMPU), Kunnamangalam, Kozhikode, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether transaction of goods between own units of MRCMPU having different TIN and same PAN is taxable or not under the Act.

2. The applicant is a dairy farmers' organization under the Kerala Co-operative Societies Act., located in the six northern districts of Kerala. MRCMPU have various dairy units viz. Palakkad Dairy, Kozhikode Dairy, Kannur Dairy, Kasaragod Dairy and Wayanad Dairy which hold different TIN for administrative convenience, all of them are owned and managed by MRCMPU, having a single PAN card, having a single board of directors. The applicant is transferring the commodities dealt with by them i.e. milk, milk products, etc. as stock transfer between their own units and the applicant contends that no sale is effected.

3. The applicant would contend that the basic definition of sale pre-supposes two different persons (the buyer and the seller). In the instant case, the single entity MRCMPU cannot be said to have made a sale to itself. The applicant has referred to Section 2(xliii) of the Kerala Value Added Tax Act, 2003 and would contend that in the instant case there is no transfer from one person

to another. Moreover this transfer does not attract various definitions given in the Act with relation to either definition of 'sale' or in the definition of 'purchase', or definition of 'turnover', 'total turnover' or 'taxable turnover' etc. Moreover as per the charging Section 6 of the Act, tax is leviable only either on sales or on purchases; hence no tax is leviable on a branch transfer. Further as per Section 6A of the Central Sales Tax Act, an assessee even if registered under two different States with separate TIN can do inter-state branch transfer and it is not taxable. The basic condition for a sale that there must be a buyer and seller is distinctly absent in the case of these transfers i.e. Kannur unit cannot be treated as having sold ghee and cream to Kozhikode unit when both are branch units of a single co-operative society. For sale to be effective there must be passing of property from one person to another and not from one hand to another hand of same person.

4. The applicant has relied on the decision of the Kerala High Court in Govt. Wood Workshop Vs State of Kerala (1998 69 STC 62) and would contend that in the instant case there is no seller and there is no buyer as goods are passed only between the same entity. There is therefore no sale of goods at all.

5. The applicant has requested to clarify as to whether the transaction of transfer of goods between own units of MRCMPU having different TIN and same PAN is taxable or not under 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. In the instant case, the dealer had voluntarily filed the application for taking out separate registrations for each place of business under Section 20(3) of the Kerala Value Added Tax Act, 2003. As such, the general rules applicable under the Act will not be applicable to the instant case which is of a special nature. The said sub-section provides that the Commissioner may *treat each of such places of business as a separate unit for the purposes of levy, assessment and collection of tax*. So, the general principle that one cannot transfer ownership to himself is not applicable in the instant case. Here, as per law, each unit acquires the character of a separate legal entity and as per the statute, for the purpose of levy, assessment and collection of tax, each unit is to be treated as a separate one, and the transfer among such units can only be treated as a sale and not as stock transfer. So, in view of the above said specific statutory provision and considering the fact that it became applicable only because of an application filed by the dealer, the applicant cannot turnaround later and raise the claim that

only a part of the said provision is applicable to them and not the whole provision, that too according to their whims and fancies.

8. So, in view of the specific statutory provision that has become applicable only because of the voluntary application filed by the dealer, it is hereby clarified that the transfer of goods among different units of MRCMPU can only be treated as a sale, since each unit acquires the characteristic of a separate legal entity.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	N. Thulaseedharan Pillai	V.J. Gopakumar
Joint Commissioner (Law)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To,

Sri. P. J. Johney, FCA,
Johney & Co.,
Chartered Accountants,
J & Co Chambers, Manimala Road,
Edappally, Kochi – 24.

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 (A&I),
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. 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 certain ayurvedic products – Orders issued.

Read : 1. Application from M/s. Vishal Personal Care Private Ltd., Hyderabad dtd. 5/8/2015.
2. Judgment of the Hon'ble High Court of Kerala in WP(C) No. 987 of 2016(W) dtd. 15/1/2016.

ORDER No.C3/28127/15/CT DATED 15/4/2016.

1. M/s. Vishal Personal Care Private Ltd., Hyderabad has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of 218 Nos. of commodities including face packs, face washes, gels etc.

2. The Hon'ble High Court of Kerala vide it's judgment read as paper 2nd above has directed to consider and pass orders on the application, after hearing the petitioner.

3. The applicant is a company incorporated under the provisions of the Companies Act 1956 and is having its Registered Office in Hyderabad, Telangana. The applicant is engaged in the manufacture and sale of ayurvedic products. The applicant has been granted a License to Manufacture for Sale of Ayurveda/Siddha/Unani Drugs vide license No. T-2037/AYUR issued in Form 25-D under Rule 154 of the Rules by the Department of Ayush, Government of Andhra Pradesh. The applicant is selling their products, to which the above license and certificates pertain to, within the State of Kerala. To this extent, the Company through its dealer, M/s. Geco Agencies is selling its products to consumers within the State of Kerala. Towards the sale of these goods to the consumers in Kerala, the dealer is presently discharging VAT at the rate of 14.5%. However these

products being ayurvedic products, the manufacture of which is being undertaken under the license issued under the Drugs and Cosmetics Act, 1940, the applicant is of the view that VAT is to be discharged at 5% as per Entry No. 36(27) of the Third Schedule to the Kerala Value Added Tax Act.

4. The applicant has requested to clarify the rate of tax of each of the 218 items listed in the application. The applicant has also requested to clarify as to whether ayurvedic products which will be sold by the applicant through the dealer will be liable to VAT at 5% from the date of obtaining the license from the Department of AYUSH or will the product be liable to VAT at 5% prior to obtaining the license also.

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

6. The Kerala Value Added Tax Act Schedule Entries to be examined in this regard are Entry 36(7)(e)(i) and Entry 36(27) of the Third Schedule. Medicaments of Ayurvedic Systems are classified under the HSN 3003.90.11 which appears in Entry 36(7)(e)(i) of the Third Schedule to the Act which reads:

36	***Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani and Homeopathic medicine but excluding mosquito repellants and those specifically mentioned in the First Schedule.***		
(7)	*Medicaments (excluding good of HSN headings Nos.3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale*		
(e)	*Other*		
	(i)	*Medicaments of Ayurvedic system*	*3003.90.11*
	(ii)	*Medicaments of Unani system*	*3003.90.12*
	(iii)	*Medicaments of Siddha*	*3003.90.13*
	(iv)	*Medicaments of Homoeopathic system*	*3003.90.14*
	(v)	*Medicaments of Bio-chemic system*	*3003.90.15*
	(vi)	*Medicaments other than those given in sub-entries (I) to (v)*	*3003.90*

As per the Rules of Interpretation of Schedules, *'those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act. Those commodities, which are not given with HSN Number, should be interpreted, as the case may be, in common parlance or commercial parlance. While interpreting a commodity, if any inconsistency is observed between the meaning of a commodity without HSN Number and the meaning of a commodity with HSN Number, the commodity should be interpreted by including it in that entry which is having the HSN Number*.

7. Note 1(d) and (e) of Chapter 30 of the Customs Tariff Act viz. Pharmaceutical products, reads:

1. This Chapter does not cover:

(d) preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties;
(e) soap or other products of heading 3401 containing added medicaments;

The Customs Tariff Act Item 3401 reads as follows:

3401		***SOAP; ORGANIC SURFACE-ACTIVE PRODUCTS AND PREPARATIONS FOR USE AS SOAP, IN THE FORM OF BARS, CAKES, MOULDED PIECES OR SHAPES, WHETHER OR NOT CONTAINING SOAP; ORGANIC SURFACE-ACTIVE PRODUCTS AND FOR WASHING THE SKIN, IN THE FORM OF LIQUID OR CREAM AND PUT UP FOR RETAIL SALE, WHETHER OR NOT CONTAINING SOAP; PAPER, WADDING, FELT AND NONWOVENS, IMPREGNATED, COATED OR COVERED WITH SOAP OR DETERGENT***
		- Soap and organic surface-active products and preparations, in the form of bars, cakes, moulded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent :
3401 11	*--*	*For toilet use (including medicated products):*
3401 11 10	*---*	*Medicated toilet soaps*
3401 11 20	*---*	*Shaving soaps other than shaving cream*
3401 11 90	*---*	*Other*
3401 19	*--*	*Other:*
	---	*Bars and blocks of not less than 500 gm in weight:*
3401 19 11	*----*	*Industrial soap*
3401 19 19	*----*	*Other*
3401 19 20	*---*	*Flakes, chips and powder*
3401 19 30	*---*	*Tablets and cakes*
	---	*Household and laundry soaps not elsewhere specified or included :*
3401 19 41	*----*	*Household soaps*
3401 19 42	*----*	*Laundry soaps*
3401 19 90	*---*	*Other*
3401 20 00	*-*	*Soap in other forms*
3401 30	*-*	*Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap :*
	---	*For toilet use (including medicated products):*
3401 30 11	*----*	*Medicated toilet soaps*
3401 30 12	*----*	*Shaving cream and shaving gel*
3401 30 19	*----*	*Other*
3401 30 90	*---*	*Other*

Hence, medicated soaps and other preparations for washing the skin in the form of liquid or cream falling under the HSN 3401 even if they have therapeutic properties or prophylactic properties cannot be included in Chapter 30 viz. Pharmaceutical Products. As such, going by the Rules of Interpretation appended to the Kerala Value Added Tax Act and the Notes of Chapter 30 of the Customs Tariff Act, the applicant's products like gels and face washes cannot be included in the HSN Code 3003 or 3004 appearing in Entry 36(7) and 36(8) of the Third Schedule.

8. The four digit HSN 3401 does not appear in any of the Schedules to the Kerala Value Added Tax Act, 2003.

9. Entry 36(27) of the Third Schedule to the Kerala Value Added Tax Act, 2003 as relevant to the context is extracted hereunder:

36 Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani and Homeopathic medicine but excluding mosquito repellants and those specifically mentioned in the First Schedule.

27	*Ayurvedic cosmetics containing added medicaments and manufactured under drug license granted under the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940)*	*****

But item VI. 23 of the Rules of Interpretation of Schedules appended to the Act specifically states that *Entry 36 in Third Schedule does not include food or beverages such as dietetic, diabetic or fortified foods, food supplements, tonic beverages, aqueous distillates or aqueous solutions of essential oils suitable for medicinal use, soaps or other products containing added medicaments, and blood albumin not prepared for therapeutic or prophylactic uses*.

10. As such, going by the Rules of Interpretation of Schedules appended to the Kerala Value Added Tax Act, 2003 and the Item VI.23 in particular, it can safely be concluded that the Legislature never intended to include ***soaps or other products containing added medicaments*** in ***Entry 36 in Third Schedule.*** The scope of the Item VI.23 is not limited to any specific sub-entry viz Entry 36(7) or Entry 36(27); but is applicable to all the sub-entries of Entry 36 of the Third Schedule. Further ***preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties*** are excluded from Chapter 30 of the Customs Tariff Act.

11. Hence, it is hereby clarified that the applicant's products falling under the category of gels, face-washes etc. would be taxable at the rate of 14.5% by virtue of Entry 27(2)(b) of S.R.O. No. 82/2006 and other products would be taxable at the rate of 5% by virtue of Entry 36(27) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To

Sri. Jose Jacob,
Advocate,
M/s. JRS Associates,
No. 41/3787, 1st Floor,
Carmel Centre, Banerji Road,
Kochi – 682 018.

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 (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 disposable plastic tumblers, trays, containers etc. – Orders issued.

Read : Application from M/s. Talash Plastopacks, Pappinisseri, dtd. 29/4/2013.

ORDER No.C3/12914/13/CT DATED 19/4/2016.

1. M/s. Talash Plastopacks, Pappinisseri has 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. The applicant would contend that they are manufacturing plastic packing materials such as cups, tumblers, containers, lids, packing material – plastic etc. which are mainly used for the packing of food products by industries, hotels, restaurants etc. As per the Kerala Finance Act – 2013, the rate of tax on ***Disposable Plates, Cups and Leaves made of Plastic*** was increased to 20%. The applicant submits that even though the increased rate is applicable only to plates, cups & leaves made of plastic, they are facing issues in check posts, where the authorities are of the view that VAT on all disposable plastics is 20%. The applicant contends that the items manufactured by them are plastic trays, plastic containers, plastic cups etc. and there is no justification to hold trays/containers as plates/cups or vice versa.

3. The applicant would also contend that the primary function of packing material is to protect the content packed in it from the influence of external sources. When food stuff is packed in containers/trays, it protects and keeps the food fresh for a longer time. The applicant's container protects the electronic components and connectors from damages. The applicant would further contend that the manufacturers/packers who pack their goods in containers or trays

consider packing materials as disposables; the end user may or may not reuse the products according to their taste and convenience. The applicant would also contend that all their products are reusable as all of them are made of food grade plastic with good quality and rigidity.

4. The applicant has requested to clarify the following points:

I. Whether the increased rate would be applicable to goods which are used as packing materials.
II. How the goods would be classified as disposable.
III. To explain disposable plates. Normally plates mean a flat dish, typically circular or square from which food is eaten or served. Plates cannot be used for packing of foods. So trays, lids & containers would not fall under this category.
IV. To explain disposable cups. Normally cup means a small bowl shaped container for drinking from typically upto a size of 130ml.
V. Cups of above 130ml are referred as Tumbler. Tumblers above 250ml are used as packing material. How to differentiate between cups and tumblers.
VI. Whether the increased rate would be applicable for disposable foam, thermocol, XPS, paper plates, cups and leaves which are manufactured out of plastics or are coated with plastics.

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

6. The applicant manufactures cups, tumblers, containers etc. of plastic which are admittedly used for packing of food products by the entities in hospitality industry i.e. hotels, restaurants etc. The applicant has also produced a few samples of the products manufactured by them.

7. The term 'disposable' has not been specifically defined in the Kerala Value Added Tax Act and hence common parlance test has to be resorted to. According to the Oxford Essential Business and Office Dictionary, the word 'disposable' means *(adj.) 'intended to be used once, then thrown away'* and *(n.) 'thing designed to be thrown away after one use'*. As such, it is apparent that disposable items are throw-away types which are not meant for repeated use. The cardinal point is the intention of the manufacturer and the user. An examination of the samples produced by the applicant would show that they are clearly disposable type products. Plates and cups do not cease to be a plate and cup and become a container merely for the reason that they have lids.

8. In view of the facts stated supra, it is hereby 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. 1/4/2013. 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. 1/4/2015. Paper cups are exempt from tax by virtue of Entry 35A of the First Schedule to the Act w.e.f. 1/4/2014. 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.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**N. Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

Adv. Sobhana Devi,
T.C. 8/373(3), Nadam,
Thirumala P.O, Thiruvananthapuram.

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. 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 printed flex used as sign boards and name boards – Orders issued.
Read : Application from M/s. Title Graphics Private Ltd., Kochi dtd. 5/6/2015.

ORDER No.C3/21206/15/CT DATED 29/4/2016.

1. M/s. Title Graphics Private Ltd., Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether the increase in the rate of tax to 20% by introducing Entry 3B in the Table below Section 6(1)(a) of the Act as per the Kerala Finance Act, 2015 applies to sign boards and name boards.

2. The applicant is a works contractor and makes illuminated sign boards and name boards and also installs them at the premises of the awarder as per the orders received. On the sale value of sign boards, they collect VAT and on the charges for installation of sign boards, they collect Service Tax.

3. The applicant would contend that sign boards and name boards are made using poly vinyl chloride sheets. PVC sheets used for making sign boards are prepared in different modes. The required matter is printed or engraved as per the requirement of the awarder of the works. The matter is:

I. Printed on the PVC sheets or
II. Engraved on a combined sheet using plotter or
III. Engraved on the top layer of a sheet using router

Signboards have the names and logos of the parties printed on it. The printed sheets are mounted on a frame made of GI bars and angles and are covered on all sides except the front by GI sheet to make it into the form of a box. An electrical wiring is installed inside the box and provision for lights are made to illuminate the sign board at nights. The printed matter used for illuminated sign boards is provided by the awarder in some cases. In some cases, the printing is got done by the applicant by units engaged in printing. The engraving is done by the applicant company, if the awarder orders for an engraved sign board. The applicant is engaged in the manufacture of sign boards and name boards only and they do not deal with banners or hoardings.

4. The applicant would contend that the words used in Entry 3B in the Table to sub-clause (a) of Section 6(1) of the Act is specific and hence will cover only the items mentioned in the Entry. 'Printed Banners and hoardings' do not include printed Sign Boards and Name Boards. No HSN code is given against Entry 3B. The applicant has referred to the Rules of Interpretation of Schedules and would contend that in common parlance, a banner means 'a flag or long strip of material displaying a slogan, advertisement etc. or a placard carried in a procession or demonstration' as per the Collins English Dictionary. Therefore Entry 3B is restricted in the case of banners to flags or other long strips made of poly vinyl chloride/polyethylene/other plastic material on which a slogan or advertisement are displayed. The applicant would also contend that in common or commercial parlance hoardings are 'large boards used for displaying advertising posters as by a road' as per the Collins English Dictionary. In respect of hoardings, the purview of Entry 3B is limited to large advertisements printed on poly vinyl chloride/ polyethylene/other plastic sheets. The applicant would also contend that 'Sign Boards and Name Boards' cannot be brought within the fold of terms 'printed banners' or 'printed hoardings' by virtue of the difference in the purposes for which they are used. A sign board is meant to be 'a board displaying a sign to direct traffic or travellers' as per Dictionary. A name board also serves the same purpose.

5. The applicant would further contend that 'Banners and hoardings' are used for advertisements or for propaganda. 'Sign Boards and name boards' are not used as a mode of marketing communication. It is normally used as an aid to a seeker. They are used to indicate the location of an entity and are normally displayed in front of or in the premises of the offices or places of business or other activity in which the entity is involved. They are

used by all types of entities and are not always used necessarily by those who carry on business.

6. The applicant has also referred to the Budget Speech, 2015 and would contend that the intention was to charge tax on disposable plastic and other items referred to therein. Sign boards are not disposable items though they may be made on flex. They are used for a considerable long time. The intention of the proposal vide the Budget is to hike tax rate on disposable flex boards and other disposable items referred to therein which are harmful to environment because of their disposal after one time use. In short, the legislators have intended to charge higher rate of tax on 'printed banners' on plastic sheets used for advertisement or campaigning or promotion of an event or increasing the popularity of a person or ideologies and which are thrown away/disposed after the event or after their use, as the case may be and also on 'large printed boards/hoardings' made of any kind of plastic sheets used purely for advertisements or for propaganda. They have never intended to charge higher tax on normal sign boards and name boards used as aids to travellers or seekers of an Office/ or any other place. The Hon. Supreme Court of India has upheld in the case of Atul Glass Industries (P) Ltd. Vs Collector of Central Excise (1986)63 STC 322 that in order to ascertain whether a product falls within a specific item in the schedule to the Central Excise Act, identity test with reference to its functional character is to be applied and the Hon'ble Court declared that the identity of an article is associated with its primary function. This principle may be extended to the case since 'sign boards and name boards' have a functional character different from banners and hoardings. The applicant would also contend that as per classification of items under the HSN system, the code for printed posters is 4911.10.10 where as the HSN code for illuminated signs and name plates is 9405.60. The classification under the HS system indicates beyond doubt that the term posters or hoardings will not cover within its purview sign boards and name boards. The legislature has intended to tax only the printed sheets of PVC or plastic used for banners or hoardings at the higher rate of 20%. lt was not intended to tax the sign boards at higher rate.

7. The applicant has requested to clarify as to whether the increase in the rate of tax to 20% by introducing Entry 3B in the Table below Section 6(1)(a) of the Act as per the Kerala Finance Act, 2015 applies to sign boards and name boards.

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

9. The intention of the Legislature behind introducing Entry 3B in the Table to sub-clause (a) of Section 6(1) of the Act was to discourage the use of printed flex, which being a plastic product is hazardous to the environment. This intention is well reflected in the Budget Speech-2015. Admittedly, the applicant is into manufacturing of sign boards and name boards using PVC sheets. The underlying essence of the Entry is to discourage the use of printed PVC/polyethylene and other plastic sheets, and the said Entry was merely indicative as regards the kind of articles made using printed flex. The durability of such articles has no relevance in interpreting the ambit of the above said Entry. It is pertinent to note that in certain cases, sign boards can even double up as a means of advertisement. Regardless of the purpose they serve, the fact that they too just like banners and hoardings, are made using PVC sheets which render them liable to be taxed at the rate of 20%.

10. In the light of the above facts, it is hereby clarified that sign boards and name boards made using printed PVC/polyethylene and other plastic sheets would be exigible to VAT at the rate of 20% by virtue of Entry 3B of the Table to sub-clause (a) of Section 6(1) of the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I) (General)	**Joint Commissioner (Law)**	**Deputy Commissioner**

To

Sri. Ranjit Mathews P.
M/s. Elias George & Co.,
Chartered Accountants,
EGC House, HIG Avenue,
Gandhi Nagar, Kochi – 20.

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

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)

N. Thulaseedharan Pillai
Joint Commissioner (General)

V.J. Gopakumar
Deputy Commissioner (General)

To,

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

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 of PVC profile panels - Orders issued.

Read : Application from M/s. Mathewsons Industries India Ltd., Kochi dtd. 30/9/2010.

ORDER No.C3/32450/10/CT DATED 20/5/2016.

1. M/s. Mathewsons Industries India Ltd., Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodity PVC profile panels.

2. The applicant is engaged in the manufacture and sale of PVC profiles and has Central Excise Registration. The profiles are manufactured through a process involving melting of PVC resin and thereafter extruding through dyes/moulds so as to get profiles of various shapes and sizes. Sheets with two top and bottom layers and vertical flues joining the top and bottom layers at regular intervals and the space generated between the top and bottom layer and the vertical flues remains hollow. The product manufactured by the applicant is used for door frames, window frames, door panels, window panels, kitchen cupboards, tables, wardrobes, wall partitions, wall ceiling etc.

3. The applicant would contend that the product when sold without any further manufacture of doors, windows, cup-boards, table etc. is only PVC profiles used as Industrial Inputs coming under Entry No.118 (16) of List A of the Third Schedule to the Act.

4. The applicant would contend that the product manufactured by them is exigible to Excise duty, and the Central Excise Department has classified the product under Tariff Item 3916.20.19 under the Central Excise Tariff Act. The applicant placing his reliance upon the Rules of Interpretation of Schedules would contend that the HSN code given against Entry 118(16) of List A is 3916 and therefore the product manufactured and sold by the applicant is to be classified under Entry 66 of Third Schedule exigible to tax at rate of 4%/5%. The applicant has also produced a copy of the letter O.C.No.712/2010 dtd. 23/9/2010 issued by the Superintendent of Central Excise, Kolenchery Range to support his contention.

5. The applicant would also contend that identical goods were the subject matter of consideration by the Hon'ble CEGAT, Mumbai in Caprihans India Ltd. Vs. CCE Aurangabad (2002) 145 ELT 664, which was affirmed by the Hon'ble Supreme Court in 226 ELT 18(SC). The applicant would contend that since the goods considered by the Hon'ble Tribunal and the goods in the present case are one and the same, applying the rationale of the decision of the Hon'ble Supreme Court, the goods are to be classified under HSN 3916 which falls under Entry 118(16) of List A of the Third Schedule taxable at the rate of 4%/5%.

6. The applicant has requested to clarify the rate of tax of the commodity.

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

8. An examination of the copy of the letter O.C.No.712/2010 dated 23/9/2010 issued by the Superintendent of Central Excise, Kolenchery Range produced by the applicant would show that the PVC Profiles manufactured by the applicant is classifiable under the CET Sub Heading No. 39 16 20 19. The said HSN Code is given against Entry No.118 (16) of List A of the Third Schedule to the Kerala Value Added Tax Act, 2003 which reads:

118 Plastic granules, plastic powder and master batches

(16) Monofilament of which any cross sectional dimension exceeds 1 MM rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked of plastics 3916

As per the Rules of Interpretation of Schedules, the commodities which are given four digit HSN Number shall include all those commodities coming under that heading of the HSN. Further those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act.

9. In view of the above facts, it is hereby clarified that the product manufactured by the applicant viz. PVC Profile classified by the Central Excise authorities under the HSN Code 3916.20.19 would be exigible to VAT at the rate of 5% by virtue of Entry No.118 (16) of List A of the Third Schedule to the Kerala Value Added Tax Act, 2003.

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. Mathewsons Industries India Ltd.,
Sector D-1104,
Jawahar Lal Nehru Stadium,
Kaloor, Kochi.

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 of UPS manufactured by APC involving the range in size from 200VA rating to 600VA, 650VA, 800VA and 1000VA - Orders issued.

Read: Application from M/s. Rashi Peripherals Pvt. Ltd., Kochi dtd. 1/4/2013.

ORDER No.C3/10442/13/CT DATED 26/5/2016.

1. M/s. Rashi Peripherals Pvt. Ltd., Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to the rate of tax of UPS manufactured by APC involving the range in size from 200VA rating to 600VA, 650VA, 800VA and 1000VA.

2. The applicant is a dealer registered under the Kerala Value Added Tax Act, 2003, borne on the rolls of the Office of the Assistant Commissioner (Assessment), Special Circle-III, Ernakulam. The applicant is a dealer in computers, peripherals & parts, UPS etc. The applicant's Head Office is at Mumbai and the goods are coming to Kerala by stock transfer and also by interstate purchase. The bills are raised on-line for the purpose of sale.

3. The applicant would submit that the Intelligence Squad No. I, Ernakulam inspected their business place and subsequently issued notices proposing to impose penalty for the years 2010-2011 and 2011-2012 on the ground that the item Home UPS sold by the applicant is not actually an IT Product, but an electrical device taxable at RNR. Later a notice was issued by the same officer under Section 47(2) of the Act wherein also it was alleged that the applicant is evading tax by wrongly classifying UPS under IT Products. The applicant has sought clarification under Section 94 of Act against this detention notice.

4. The applicant would contend that UPS and peripherals are goods coming under the Third Schedule to the Act taxable at 4% for the years 2010-2011 & 2011-2012. The applicant has also placed his reliance upon the clarification Order No. C3.20085/11/CT dated 30/11/2012 and clarification Order No. C3/5136/13/CT dated 27/5/2014 to support his case.

5. The applicant has requested to clarify whether the UPS manufactured by APC involving the range in size from UPS units 200VA rating to 600VA, 650VA, 800VA and 1000VA rating is taxable at 4% or as Electrical goods taxable at 12.5%.

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

7. The Kerala Value Added Tax Act Schedule Entry to be examined in this regard is Entry 69(27) of the Third Schedule (omitted vide Kerala Finance Act-2014), which as relevant to the context, is extracted hereunder:

69 IT Products

(27) Uninterrupted power supply *8504.40*

8. Basically, the feature that differentiates a UPS from an inverter is the time taken to switch over from the mains to battery power i.e. the time lag. In the case of the former it takes only three to eight milliseconds whereas the latter takes half a second. As such, it is apparent that in the case of a UPS, the switch over is instantaneous whereas with the inverter there is a time lag.

9. The impugned issue is similar to the subject matter that was technically examined, discussed in detail and already clarified vide the orders read above.

10. In view of the above said facts and the clarification orders referred to in the foregoing paras, it is hereby clarified that the impugned commodities viz. UPS manufactured by APC involving the range in size from 200VA rating to 600VA, 650VA, 800VA and 1000VA would be taxable at the rate of 4% upto 31/3/2012 and at the rate of 5% for the period from 1/4/2012 to 31/3/2014 by virtue of Entry 69(27) of the Third Schedule to the Kerala Value Added Tax Act, 2003. However the impugned commodities would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006 w.e.f 1/4/2014.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N. Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (Law)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

Adv. E.S. Moosa,
M/s. Moosa & Associates,
Advocates & Tax Consultants,
Prakash Building, Opp. PWD Rest House,
Thodupuzha – 685 584.

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. 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 Solar LED Lamp and Solar LED Home Lighting system – Orders issued.
Read: Application from Sri. P.J. Johney, Chartered Accountant, Kochi dtd. 15/1/2015.

ORDER No.C3/2405/15/CT DATED 26/5/2016.

1. Sri. P.J. Johney, Chartered Accountant, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodities Solar LED lamp and Solar LED Home Lighting system.

2. The applicant was heard in the matter and the contentions raised were examined.

3. The Kerala Value Added Tax Act Schedule Entry to be examined with regard to equipments based on solar energy is Entry 6 of the Second Schedule to the Act (as amended vide Kerala Finance Act – 2013) which as relevant to the context is extracted hereunder:

6.	***Solar energy devices and spare parts***	
	(1) Solar cells	*8541.40.11*
	(2) Solar lanterns and lamps	*9405.50.40*
	(3) Parts of solar lanterns and lamps of—	
	(a) glass	*9405.91.00*
	(b) plastic	*9405.99.00*
	(4) Solar energy equipment	******
	(5) Solar water heaters and systems	******
	(6) Solar crop driers and systems	******
	(7) Solar refrigerations, solar cold storages and solar air-conditioning systems	******
	(8) Solar stills and desalination systems	******
	(9) Solar pumps based on solar thermal and solar photovoltaic conversion	******

(10) Solar power generating system	****	
(11) Solar cookers	****	
(12) Concentrating and pipe type solar collectors		****
(13) Flat plate solar collectors		****
(14) Solar photovoltaic modules and panels for water pumps and other application		****
(15) Black continuously plated solar selective coating sheets, fans and tubes		****
(16) Vacuum tube solar collectors		****
(17) Solar photovoltaic cells, modules, and other systems/devices	****	

4. While interpreting a statutory provision what is of paramount importance is the intention of the Legislature in having incorporated such a provision or entry, as the case may be. The Legislature by virtue of the amendments made by the Kerala Finance Act - 2013 reduced the rate of tax of solar energy devices and spare parts to 1%. The intention behind such an exercise was to promote the use of non-conventional energy sources like solar energy.

5. A consumer who buys the commodities Solar LED lamp and Solar LED Home Lighting system treats them as devices using solar energy as the source of energy for serving their respective purposes. As per the literature produced by the applicant, the commodity Solar LED lamp i.e. *Panasonic BG-BL04DCE-G Multi-purpose Solar LED Light & Mobile Charger* is not only a solar LED lamp, but can also be used as a charger for mobile phones. But it is only an add-on feature which does not alter its basic nature of being solar energy equipment.

6. In the light of the facts and the legislative intention discussed supra, it is here by clarified that the commodity *Panasonic BG-BL04DCE-G Multi-purpose Solar LED Light & Mobile Charger* and the commodity *Panasonic Solar LED Home Light System* would be taxable at the rate of 1% by virtue of Entry 6(2) of the Second Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Sri. P.J. Johney FCA,
M/s. Johney & Co.
Chartered Accountants,
J & Co. Chambers, Manimala Road,
Edappally, Kochi – 24.

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. 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 – Whether value of medicines supplied free of cost to patients and employees is to be included in the total and taxable turnover – Orders issued.

Read : Application from M/s. Vaidyaratnam P.S. Varier's Arya Vaidya Sala, Kottakkal dtd. 25/11/2014.

ORDER No.C3/36462/14/CT DATED 26/5/2016.

1. M/s. Vaidyaratnam P.S. Varier's Arya Vaidya Sala, Kottakkal has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether the value of medicines supplied free of cost to patients and employees is to be included in the total and taxable turnover.

2. Arya Vaidya Sala (AVS) was established in the year 1902 by Late Vaidyaratnam P.S. Varier. AVS was converted to a charitable Trust under the registered Will of the founder in 1944. The applicant submits that the question as to whether the institution is a charitable trust has been debated before the Hon'ble Supreme Court and the Hon'ble High Court of Kerala in several cases under different branches of law and all the Courts have held that the institution is a charitable trust. The applicant has referred to the decisions in CIT, Kerala Vs. P. Krishna Warrier, reported in 53 ITR 176; P. Krishna Warrier Vs. CIT, Kerala reported in 127 ITR 192; CIT Vs. P. Krishna Warrier reported in 208 ITR 823; The Managing Trustee, Arya Vaidya Sala, Kottakkal Vs. State of Kerala and Others reported in 1989(2) KLN 127, Managing Trustee, Arya Vaidyasala Kottakkal Vs. State of Kerala and Others reported in (2005) 141 STC

142 wherein it was reportedly declared that the institution is a trust, the predominant object of which is charity.

3. The applicant would submit that as part of the charity done by the institution, they are supplying medicines free of cost from their Charitable Hospital and Cancer Cell at Kottakkal and from its sales outlets to poor and needy patients. Medicines are also issued free of cost to the employees in a restrictive manner. Free supply of medicines as stated above started since the year of inception and is still continuing.

4. The Assistant Commissioner (Assessment), Special Circle, Malappuram had issued a Notice U/s 25(1) of the Kerala Value Added Tax Act for the year 2012-2013 wherein it had been stated that the free issues amounting to ` 736,80,311/- as trade discount in quantity is liable to be included in the taxable turnover by virtue of Section 7 of the Act.

5. The applicant has referred to Section 7 of the Act and contends that the essential ingredients for attracting Section 7 are:-

i. Sale of goods
ii. Allowing of trade discount/ incentive in terms of quantity (kind) in relation to sale.

6. The applicant would contend that from a reading of Section 7 it is clear that the first and foremost requirement for attracting Section 7 is sale of goods. In the light of the definition of sale contained in section 2(xliii), to constitute a sale, there must be:

i. Transfer of property in goods by one person to another in the course of trade or business and
ii. Such transfer of property must be for cash or deferred payment or for other valuable consideration.

7. The applicant would also contend that the institution is not supplying medicines free of cost to the patients and employees 'in the course of trade or business'. A charitable activity of supply of medicines free of cost to poor and needy patients and employees does not amount to trade or business.

8. The applicant would further contend that the essence of sale lies in the transfer of property for cash or for deferred payment or other valuable consideration. The definition of sale contained in the Act cannot be construed to include within its ambit those transactions which do not fall within the definition of 'sale' contained in the Sale of Goods Act and therefore the definition in the Kerala Value Added Tax Act must be construed accordingly. Section 4 of the Sale of Goods Act defines 'sale' as a transaction whereby there is transfer of

property in goods to the buyer for a price. Section 2(10) of the Sale of Goods Act defines 'price' as 'money consideration for a sale of goods'. Thus, in order that a transaction may amount to a purchase/sale in accordance with the Sale of Goods Act, the consideration has to be money.

9. The applicant would also contend that in the case of supply of medicines free of cost, though there is transfer of property in goods, transactions cannot be construed as amounting to 'sale' within the meaning of Sale of Goods Act. The definition of 'sale' given in Section 2 (xliii) of the Kerala Value Added Tax Act should also, therefore be, construed similarly. The words 'other valuable consideration' in the context has to be considered as equated with money, the word being wider than cash. The expression 'cash or deferred payment or other valuable consideration' used in the definition of Sale in Section 2 (xliii) of the Kerala Value Added Tax Act has to be construed to mean cash or some other monetary payment. The words 'other valuable consideration', which occur in Section 2(xliii) of the Act can be interpreted by rules of ejusdem generis, the payment of cheque, bill of exchange or other negotiable instruments. The words 'deferred payment or other valuable consideration' used in Section 2(xliii) of the Act merely enlarge the ambit of the consideration beyond cash, but do not carry it outside the scope of the term 'money' [Hon'ble High Court of Kerala in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. M. Jaihind, Shalimar Jewellery, Ernakulam reported in (1998) 6 KTR 500. Sale is transfer of property in goods in the course of trade or business, whereas the transaction involved in free supply of medicines as part of the charitable activity of the institution, is not made in the course of trade or business. Moreover, free supply of medicines will not amount to sale as defined under Section 2(xliii) of the Act and consequently Section 7 also cannot be applied to free supply of medicines so as to treat the value of medicines so supplied as turnover or taxable turnover under the Kerala Value Added Tax Act.

10. The applicant has requested to clarify whether the value of medicines supplied free of cost to the poor and needy patients and employees, subject to restrictions is liable to be included in the total or taxable turnover by virtue of Section 7of the Act.

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

12. As per the definition of the term 'sale' contained in Section 2(xliii) of the Kerala Value Added Tax Act, 2003, one of the essential elements of sale is the transfer of property in the course of trade or business for cash or for deferred payment or for other valuable consideration. In the instant case, the supply of medicines to patients and employees is reportedly free of cost i.e. there is no consideration involved in such supply. Going by the clear definition of the term 'sale' given in the Kerala Value Added Tax Act, 2003 read in consonance with the statutory provision contained in Section 7 of the Act, it is hereby clarified that the supply of medicines free of cost to poor and needy patients and employees in a restrictive manner would not amount to sale and hence the value of medicines so supplied is not liable to be included in the total and taxable turnover of the applicant by virtue of Section 7 of the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

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

N. Thulaseedharan Pillai
Joint Commissioner (General)

V.J. Gopakumar
Deputy Commissioner

To,

Sri. K. Venugopalan,
Chief Manager (Legal),
Vaidyaratnam P.S. Varier's Arya Vaidya Sala, Kottakkal,
AVS Road, Kottakkal – 676 503.

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. 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 – Calculation of compounded tax payable by a dealer in gold – Orders issued.
Read : Application from M/s. Sky Gold Cherupuzha, Cherupuzha dtd. 9/1/2015.

ORDER No.C3/1593/15/CT DATED 31/5/2016.

1. M/s. Sky Gold Cherupuzha, Cherupuzha has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the calculation of compounded tax payable by a dealer in gold.

2. The applicant has referred to clause (f) of Section 8 of the Kerala Value Added Tax Act, as it stood during 2011-12, and would contend that Explanation 2 applies only to a case where the dealer opting for compounding started business during the year preceding that to which the option relates and during such year he had transacted business only for part of the year.

3. The applicant would 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). The applicant has relied upon the judgments of the Hon'ble Supreme Court in State of Jharkhand and Another vs. Govind Singh (AIR 2005 SC 294) and Keshavji Raoji & Co. Vs. Commissioner of Income Tax (AIR 1991 SC 1806) to support his case.

4. The applicant would contend that as a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. So, where a dealer had transacted business for the whole year of 2010-2011 there was no need to estimate the tax payable for the year 2009-2010 and then make a comparison and fix the compounded tax payable for the year 2011-12.

5. The applicant has requested to clarify whether in the case of a dealer in gold jewellery who had started business during the course of the year 2009-2010 and doing business consecutively from the middle of 2009-2010 to 2011-2012, for the calculation of the quantum of compounded tax for the year 2011-2012, there is need to estimate the tax payable for the year 2009-2010 applying Explanation 2 to clause (f) of Section 8 of the Act and then make a comparison with reference to the tax so estimated for the year 2009-2010 and the tax payable as per the return or accounts for the year 2010-11 and then fix the compounded tax payable for the year 2011-12, or whether the quantum of tax for the year 2011-2012 can be fixed on the basis of the tax payable as per the return or accounts for the year 2010-11 in view of Explanation 1 to Section 8 (f).

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

7. In the instant case the dealer in gold jewellery started business during the financial year 2009-2010, and did continuous business from the middle of 2009-2010 to 2011-2012. The dealer opted for payment of compounded tax, for the first time, for the financial year 2011-2012.

8. Admittedly, the applicant has not transacted business for the last three years concerned continuously, before opting to pay tax at compounded rate for the financial year 2011-2012. The case being so, as per Explanation 1 to Section 8(f), for the purpose of computing the compounded tax liability, the highest tax paid or payable by the dealer during the year or years in which he transacted business shall be considered. Now, Explanation 2 to Section 8(f), read '*where during any such preceding year, the dealer had not transacted business for any period in that financial year, the tax payable for the twelve months shall be calculated proportionately on the basis of the tax payable or the turnover conceded, as the case may be, for the period during which such dealer had transacted business'.*

9. To summarise, the dealer had transacted business during the entire period of financial year 2010-2011. However, that was not the case with the

financial year 2009-2010. As per Explanation 2, the tax payable for the twelve months of the financial year 2009-2010 would have to be calculated proportionately on the basis of the tax payable for the period during which the applicant had transacted business during the financial year 2009-2010.

10. In view of the above facts and the relevant statutory provision, it is hereby clarified that Explanation 1 and Explanation 2 are applicable to the case in hand i.e. for the purpose of computing the compounded tax liability of the applicant for the year 2011-2012, the highest tax paid or payable by the dealer during the financial years 2009-2010 (calculated as per Explanation 2) and 2010-2011 will have to be considered.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**N. Thulaseedharan Pillai**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner (General)**

To

M/s. S. Anil Kumar, K.S.Hariharan & K. Umamaheswar,
Advocates,
Haridev Buildings,
Old Railway Station Road,
Kochi – 682018.

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 of maths lab equipments – Orders issued.

Read : Application from M/s. Salisa Educational Solutions & Research Centre (P) Ltd., Thiruvananthapuram dtd. 7/7/2015.

ORDER No.C3/24259/15/CT DATED 31/5/2016.

1. M/s. Salisa Educational Solutions & Research Centre (P) Ltd., Thiruvananthapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of maths lab equipments.

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

3. The applicant produced samples of the commodities at the time of hearing. An examination of the impugned products would show that they are non-electrical models/shapes like cylinders, triangles etc. which are meant for use in education for demonstrational purposes.

4. As per the Customs Tariff Act, instruments, apparatus and models designed for demonstrational purposes in education are classified under the HSN Code 9023.00. The Customs Tariff Act Item 9023, as relevant to the context, is extracted hereunder:

9023 ***INSTRUMENTS, APPARATUS AND MODELS, DESIGNED FOR DEMONSTRATIONAL PURPOSES (FOR EXAMPLE, IN EDUCATION OR EXHIBITIONS), UNSUITABLE FOROTHER USES***

9023 00 - Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses:
9023 00 10 --- Teaching aids
9023 00 90 --- Other

5. The four digit HSN Code 9023 is included in Entry 5(4) of the First Schedule to the Kerala Value Added Tax Act, 2003. As per the Rules of Interpretation of Schedules, those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act, 1975. Further, the commodities which are given four digit HSN number shall include all those commodities coming under that heading of the HSN.

6. In view of the above facts, it can safely be concluded that the applicant's commodity maths lab equipments i.e. non-electrical instruments, apparatus and models designed for demonstrational purposes in education which are un-suitable for other uses would be classifiable under HSN Code 9023 and hence, is exempt from tax by virtue of Entry 5(4) of the First Schedule to the Kerala Value Added Tax Act, 2003.

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. Salisa Educational Solutions & Research Centre (P) Ltd.,
Thiruvananthapuram.

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. 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 Spectrum Analyser Model Redlands EDX 600 classified under the HSN Code 9030.33.90 – Orders issued.

Read : Application from M/s. Redlands Ashlyn Motors PLC, Thrissur dtd. 15/10/2015.

ORDER No.C3/36047/15/CT DATED 31/5/2016.

1. M/s. Redlands Ashlyn Motors PLC, Thrissur has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodity Spectrum Analyser - Model Redlands EDX 600 classified under the HSN Code 9030.33.90.

2. The applicant is a registered dealer of the product Spectrum Analyzers (EDXRF Spectrometers {Gold Purity Analysers}). The applicant would contend that the commodity is coming under Entry 69(23)(b) of Third Schedule to the Kerala Value Added Tax Act, under IT products under the corresponding HSN Code 9030.33.

3. The applicant would contend that the Bill of Entry copies would clearly show that this item is imported under HSN Code 9030.33, since it is with all features nothing but Spectrum Analyser. The Rules of Interpretation are only guidelines to appropriately regularise and weed out to find most approximately the category of goods for the purpose of classification. If a particular commodity is imported under a particular HSN Code, and that HSN Code corresponds to directly classified goods under the Schedules, then that ought to have been accepted to determine the correct rate of tax. Here the product has been already imported under the HSN Code 9030.33 and hence Spectrum Analyser is coming under Entry 69 (23)(b) of Third Schedule.

4. The applicant has relied on the judgments in K.P. Namboodiri's Ayurvedics Vs. State of Kerala (2010 KLT (1) 686), Foods, Fats and Fertilizers Ltd. Vs. State of Kerala (VST - 2014 - 74 -56), MP Agencies Vs. State of Kerala (2015 (7) SCC 102) and A B S Industries Vs. Authority of Issue Clarification in 2014 (1) KLT 908 to support his case.

5. The applicant would further submit that:

- *Spectrum Analyser (EDXRF Spectrometer) definition: In energy dispersive analysis, the fluorescent X-rays emitted by the material sample are directed into a solid-state detector which produces a "continuous" distribution of pulses, the voltages of which are proportional to the incoming photon energies. This signal is processed by a multichannel analyser (MCA) which produces an accumulating digital spectrum that can be processed to obtain analytical data, Since an EDXRF (Energy dispersive X-ray fluorescence) Spectrometer analyses its results through a spectrum it belongs to the general class of Spectrum Analysers.*
- *Spectrometers /Spectrum analyzers are instruments and depending on its type of analysis can measure any composition elements, lights, sound etc. The Spectrometer/Spectrum analyzer is an instrument that can only give approximate value as its accuracy is dependent on a broad range of factors. Spectrometers/Spectrum analyzers have not been defined as a measuring instrument coming under the Legal Metrology Act. Therefore spectrometers / spectrum analyzer can never be legally classified a a measuring instrument.*

- *To analyze the purity of gold in India the Fire assay is the only legally accepted analytical method whose procedures are clearly defined by the Bureau of Indian Standards (BIS) and analysis by a spectrometer / spectrum analyzer is only a reference and never definitive.*

- *EDXRF spectrometer is a Spectrum Analyser that is widely employed in fields as diverse as alloy analysis, mineral analysis, geographic analysis, biological analysis, scrap metals recycling analysis, RoHS testing and soil analysis. Moreover, it can also be used to perform material identification (PMI) and verification. The dominant character and the purpose of the instrument is to analyse and not for measure. Nowhere can such analyzers be found to be used for measuring. The function is analyzing. The conclusion is basing upon the test result derived after analysis. Therefore an analyzing machine, when its results are used for variety of purposes, cannot be said to connote or be nicknamed or classified by a specific result or oriented function. The analysis is the function and the result thus obtained is its expression. In so much, the spectrum analyzer cannot be nicknamed as a measuring instrument instead of an analyzer to suit the convenience of extracting a higher rate of tax. The application for gold is emphasized only to highlight and attract and generate more clients by the instrument buyer by underlining that he has the instruments to ensure high quality jewellery and the analyzer is nothing more than a quality control tool. An advertisement technique cannot be the basis for classification or point to logical conclusions. The dominant character of cannot be mutated to anything, resembling that of a precise measure or weight that possess the characteristics which enable a clear definition facilitating its inclusion under the Legal Metrology Act.*

6. The applicant has requested to clarify the rate of tax of the commodity Spectrum Analyser - Model Redlands EDX 600 classified under the HSN Code 9030.33.90.

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

8. The applicant has produced a copy of the Bill of Entry for Home Consumption with regard to the impugned product. A perusal of the same would show that the commodity Spectrum Analyser - Model Redlands EDX 600 is classified under the HSN Code 9030.33.90. Since the Customs Authorities have classified the commodity under the HSN 9030.33.90, classification under any other HSN Code is not warranted.

9. The Kerala Value Added Tax Act Third Schedule entry relied upon by the applicant i.e. Entry 69(23)(b), as relevant to the context, is extracted hereunder:

69	***IT Products***	
(23)	*Cathode ray oscilloscopes, spectrum analysers, signal analysers —*	
(a)	*Cathode ray oscilloscopes*	*9030.20.00*
(b)	*Spectrum analysers*	*9030.33*

10. The Kerala Value Added Tax Act Schedules are aligned with the Customs Tariff Act. The Rules of Interpretation of Schedules appended to the Kerala Value Added Tax states that *those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act, 1975*. Further *the commodities which are given six digit HSN Number shall include all those commodities coming under that sub-heading of the HSN.*

11. In view of the facts stated supra, it can safely be concluded that the applicant's commodity i.e. Spectrum Analyser - Model Redlands EDX 600 classified under the HSN Code 9030.33.90 by the Customs Authorities is includible under Entry 69(23)(b) of the Third Schedule to the Kerala Value Added Tax Act, 2003 having the HSN Code 9030.33 and hence would be exigible to VAT at the rate of 5%.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**V.J. Gopakumar**
Joint Commissioner (A&I)	**Joint Commissioner (Law)**	**Deputy Commissioner (General)**

To,

Adv. M.Unnikrishna Menon,
Devdatham Solicitors,
Solicitors & Lawyers,
Paliyam Road, Thrissur – 680 001.

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 (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. S. Anil Kumar.
Deputy Commissioner (Internal Audit),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Supplying and installing cell type rubber fenders at Cochin port – Orders issued.

Read:- Application from M/s. Hitech Elastomers Ltd., Ahmedabad dtd. 23/6/2016.

ORDER No.C3/20680/16/CT DATED 30/09/2016.

1. M/s. Hitech Elastomers Ltd., Ahmedabad has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether replacing of old and damaged rubber fenders with new set of fenders amounts to interstate works contract.

2. The applicant is a dealer situated in the State of Gujarat holding TIN 24060101340 under Gujarat Value Added Tax Act and CST No. 24560101340 under CST Act, 1956.

3. The applicant has submitted that they have been awarded a works contract by M/s. Cochin Port Trust, W.Island, Kochi for replacing old and damaged Rubber Fenders with new set of Cell Type Rubber Fenders at Cochin Port. The applicant has defined fender as under:

> *Fender is a bumper used to absorb the kinetic energy of a vessel berthing against a jetty. Solid Rubber Fender is a devise of a rubber mainly used to eliminate damage to a berthing ship or berthing structure. Fenders usually have a high energy absorption and low reaction force. The fenders are typically manufactured out of rubber, foam elastomer and plastic*.

4. The applicant has further submitted that the rubber fenders are not manufactured in Kerala and hence not a product which can be sourced from Kerala. The Rubber fenders are directly supplied from outside the State of Kerala charging full CST @ 15%.

5. The applicant has requested to clarify whether the above work is an interstate works contract and whether the provisions of TDS under the KVAT Act is applicable in this case.

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

7. The applicant produced copies of the tender, agreement with M/s. Cochin Port Trust, work order and invoices. As per the terms of the agreement, the replacement should strictly conform to the size specified by the awarder. It is further clear from the terms of the agreement that the fixing of new fenders, bollards and fender frontal frames at various berths requires great skill and technical expertise. Thus, this is a composite works contract involving both supply of materials and skill and labour. On the basis of the above agreement, goods have moved from Gujarat, where the applicant is based, to Cochin for the purpose of execution of the works contract. Hence, the interstate movement of goods is in pursuance of and incidental to the works contract agreement executed between the applicant and the Cochin Port Trust.

8. The Supreme Court of India in the case Union of India Vs. K.G. Khosla and Co. Ltd. (43 STC 457) had held that what is really decisive is whether the sale is one which has occasioned the movement of goods from one State to another. The questions regarding interstate sale is to be answered on the basis of section 3 of the Central Sales Tax Act. The law requires that it should be levied and collected in the State from which the movement of goods commences. The movement of goods in pursuance of the agreement is the main criteria for fixing the situs of taxation [Bharat Heavy Electricals Vs. Union of India 102 STC 382]. A sale is an interstate sale under section 3, if there is a contract of sale preceding the movement from one state to another and the movement must be the result of this covenant [Indian Oil Corporation 47 STC 5]. In the present issue for clarification, spare parts are moved after specific requisition is placed by the site engineer. In Builders Association of India Case [73 STC 394], it was held that if in the process of executing a works contract, a transfer of property in the goods take place outside the State, the State would have no power to levy sales tax on such a transfer. In Larsen and Toubro Ltd. Vs. Commissioner of Commercial Taxes (2003) 132 STC 272 (AP) it was held that, if movement of goods from outside the state was occasioned by contract and Central Sales Tax is paid in the State of origin, no local taxes are leviable.

9. A perusal of the terms and conditions of the agreement produced by the applicant would show

that the movement of goods is from Gujarat and not manufactured in Kerala. If there is movement of goods from one State to another in pursuance of an agreement to execute a works contract, it is an interstate sale and the State from which such movement of goods commenced is the only State authorised to levy tax on such deemed sale. The State where works contract was executed has no authority to levy tax or make law to deduct tax upon it. In the instant case, the movement of goods are from outside the State of Kerala, in pursuance of an agreement for the execution of a works contract. As such there is an interstate sale as per section 3 of the Central Sales Tax Act, 1956 and such sale has occurred at the State where the good were situated at the time of appropriation of such goods to the contract as per section 4(2) of the Central Sales Tax Act, 1956. Tax shall be collected by the Government in the State from which the movement of goods commenced as per section 9(1) of the Central Sales Tax Act, 1956.

10. In the circumstances and as per the copy of tender, agreement and invoices, the works contract entered into by the applicant with M/s. Cochin Port Trust is an interstate works contract, and hence no tax under the KVAT Act is leviable. The assessing authority of M/s. Cochin Port Trust can issue certificate after verifying the originals of the relevant documents.

10. The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N. Thulaseedharan Pillai**	**S. Anil Kumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner(Internal Audit)**
O/o CCT	**O/o CCT**	**O/o CCT**

To

Sri. V.V.Sekhar FCA,
JRS & Co., P.T.Usha Road,
Kochi-682011

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 (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. S. Anil Kumar.
Deputy Commissioner (Internal Audit),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Whether the turnover in the futures market and market margins comes within the purview of taxable turnover under the KVAT Act – Orders issued.

Read:- 1. Application from Sri. Joshy Varghese, Mankada Trading Company, Mankada dtd. 28/3/2016.

2. Judgement of Hon'ble High Court of Kerala in WP(C) No. 15211 of 2016 (B)

ORDER No.C3/12215/16/CT DATED 06/10/2016.

1. Sri. Joshy Varghese, Mankada Trading Company has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether the turnover in the futures market and market margins received by the participants in the future market comes under taxable turnover or the said transaction comes within the purview of explanation VIII(a) to the definition of sale in section 2(xliii) of the KVAT Act.

2. The applicant is a dealer registered on the rolls of the Commercial Tax Officer, Perinthalmanna. The applicant is doing business in future trading. The applicant has submitted that he is proposed to enter into future contracts with other similar dealers by executing agreement to buy commodity like Rubber, Pepper, Arecanut etc. to sell at a future date. The applicant would submit that future trading takes place in respect of goods which is not in existence as on the date on which the transaction takes place. The system works as per the rules and regulations made by the Forward Marketing Commission functioning under the Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

Under the said Commission there are so many exchanges like the National Multi-commodity Exchange of India Ltd.

3. The applicant explains how the system works, as follows.

*On a particular day, say 20th July, 2016, a dealer say **A** (**buyer**) agrees to buy one Metric Ton of rubber at Rs. 150/- per kg for 15th October 2016. This date is known as the "Contract Expiry" date. On the same day another dealer **B** (**seller**) may agree to sell rubber of the same quantity for Rs. 150/- per kg also for 15th October, 2016. A & B do not pay/receive any consideration at the time when they enter into the contract, but only have to deposit a margin amount (which varies from 4% to 15%) to the exchange. As far as A is concerned, the seller remains anonymous. Similarly in the case of B, the buyer remains anonymous. Suppose, on 21st July, the market price of the commodity increases to Rs. 160/- per Kg. Then the commodity exchange will debit B by the differential amount (Mark to Market – MTM), i.e., Rs. 10/- per KG and credit A by the same amount. If on the next day the price falls to Rs. 140/-, the exchange will credit B, the seller with Rs. 20/- and debit the buyer A by Rs. 20/-. This debit and credit goes on till the date the contract matures and A either takes delivery of the goods or squares off his position, since he has the liberty to square off his position agreed to be bought by him on any day before the contract expiry date. In such instances there is no physical sale. Similarly, it is also not necessary that B, the seller in the present case should have any stock of rubber to enable him to participate in future trading. He need possess the stock only if he has to deliver the goods on expiry of contract. In these instances, when either A or B exit, C will take their place. It is not possible even for the Commodity Exchanges to exactly earmark each buyer to seller though the total number of buyers and sellers will always remain equal. Any dealer, anywhere in India, who is not even registered, can participate in future trading and earn or lose money. A dealer is required to have registration only if he, as a buyer, has to take delivery of the goods on the contract expiry day. So, for participating in futures trading the participant need not possess any goods at all and hence he need not be a registered dealer (not even a dealer).*

On the expiry of the contract all participants who have an outstanding sell position are required to deliver the goods. This is done at the settlement price of the contract which is the closing price at the expiry of the contract on the last day, irrespective of whether such price is lower or higher than the price of the commodity on the date on which the agreement to sell/buy was entered into. Invoice will be raised for the price on the date of delivery. The buyer does not know in advance as to who is the person who will raise the invoice on contract expiry and vice-versa. An actual sale/purchase takes place, wherein there is a transfer of ownership and movement of consideration, only on contract expiry. The price charge on the goods actually handed over to the buyer will be turnover of the seller.

The amount standing to the credit of the buyer or seller on account of the working of the system, without any transfer of goods, will be his gain on account of the operation of the system of future trading. This amount does not have any relation to the goods bought or sold. The buyer will be paying the tax on the basis of the bill issued at the time of physical delivery of the goods. If the seller realizes any amount more than that, it will amount illegal collection of tax. The profit on future trading is given by the agency which undertakes the "future trading" by maintaining a ledger account for dealers who participate in the future trading. The agency or the recipient will not be in a position to pin point whether the amount received by a dealer at the end of a specific period due to the operation of the system of future trading relates to a particular sale or not. The amount received need not have any relation at all to any goods as the system works even without any goods in the possession of the seller, except in the case of actual physical delivery of goods.

The Exchanges clearly define Cash/physical market separate from derivative market. There are Spot Exchanges and Derivative Exchanges. In Derivative Exchanges physical delivery of goods takes place only when the contract expires.

4. The applicant would contend under section 6 of the KVAT Act, liability to pay tax is on the taxable turnover. "Taxable turnover" is defined to mean the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover in the prescribed manner. As per clause (lii) of section 2 of the Act, the term "turnover" is defined as follows.

> *(lii) "Turnover" means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or for other valuable consideration, provided that the proceeds of the sale by a person not being a Company or Firm registered under the Companies Act, 1956(Central Act 1 of 1956) and Indian Partnership Act, 1932 (Central Act 9 of 1932) or society including a co-operative society or association of individuals whether incorporated or not of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.*

5. The applicant would also contend that as per rule 9, the total turnover of a dealer for the purposes of the rules shall be the aggregate of the amount for which goods are sold by a dealer and amount for which goods taxable under sub-section (2) of section 6 are purchased by a dealer. As per clause (xliv) of section 2 of the Act,

> *Sale price means the amount of valuable consideration received or receivable by a dealer for the sale of any goods less any sum allowed as cash discount, according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods or services at the time of or before delivery thereof, excise duty, special excise duty or any other duty or taxes except the tax imposed under this Act.*

The term sale is defined as under.

> *(xliii) "Sale" with all its grammatical variations and cognate expressions means any transfer whether in pursuance of a contract or not of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or for other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;*
>
> *Explanation VIII:- (a) The sale or purchase of goods shall be deemed, for the purposes of this Act, to have taken place in the State where the contract of sale or purchase might have been made, if the goods are within the State,-*

(i) in the case of specific or ascertained goods at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation;

(b) Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places;

(c) For the purpose of this Act, the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer irrespective of the place where the agreement of works contract is made, whether the assent of the other party to the contract is prior or subsequent to such transfer;

6. The applicant would further contend that a particular transaction should amount to "sale" and the consideration there for should amount to "turnover", there should be two parties, who should enter into a contract of sale in pursuance of which the seller should deliver and the buyer should accept the specified goods, which is the subject matter of such sale, i.e. the goods should be appropriated to the contract of sale. In the case of future trading, trading takes place in respect of future goods. So even without the physical existence of goods, a dealer offers to sell, without knowing who the buyer is, and another dealer offers to buy without knowing who the seller is, goods which may come into existence on a future date. Also, the amount (MTM) received by a dealer on account of the operation of the system of future trading, which is independent of the goods ultimately sold, from the agency working under the NMCE/NCDEX/MCX, cannot, by any stretch of imagination be termed as "turnover" for the purposes of section 6 of the Act. On the said amounts, the recipients are subject to income tax. All along the said amount was regarded as income of the recipient and was never included in the turnover of the recipients.

7. The applicant has placed his reliance on the judgement of the Hon'ble Supreme Court in the Sales Tax Officer, Pilibhit vs. M/s. Budh Prakash Jai Prakash and would contend that the amount received by the applicant as gain from future trading will not come under the purview of "turnover" of the appellant. The observation of Hon'ble of Supreme Court in the above case is as follows.

"The position therefore is that a liability to be assessed to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. It would be contrary to all principles to hold that damages for breach of contract are liable to be assessed to sales tax on the ground that they are in the same position as sale price. The power conferred under entry 48 to impose a tax on the sale of goods can therefore be exercised only when there is a sale under which there is a transfer of property in the goods, and not when there is a mere agreement to sell. The State Legislature cannot, by enlarging the definition of "sale" as including forward contracts,

arrogate to itself a power which is not conferred upon it by the Constitution Act, and the definition of "sale" in section 2(h) of Act XV of 1948 must, to that extent, be declared ultra vires."

And held that the receipt from forward contract will not form part of the turnover.

8. The applicant has also referred to a communication issued vide D.O.No. 3/8/2010-MKT-II dtd. 02-03-10 by Forward Markets Commission [constituted under the provisions of the Forward Contract (Regulation) Act, 1952] to the Chief Secretary to Government stating inter alia, that –

"VAT is payable on such actual delivery which happens after the contract is settled. If the contract is settled other than by delivery, no VAT would be payable because VAT is leviable only on actual sale of goods."

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

10. The matter had been examined earlier and vide this office letter C1-36674/08 dtd. 25.05.2010, instructions were given to all DCs and DC(I)s that as per the procedure of future trading, the goods are not ascertained when the contracts are entered into and there is only an agreement to sell. So, in respect of unascertained or future goods, the sale takes place only at the time of their appropriation to the contract of sale. Hence, only those contracts which result in actual physical delivery of goods alone will be exigible to Value Added Tax as per the definition of sale in KVAT Act, 2003.

11. In the light of the above, it is clarified that turnover relating to market margins received by the participants in the future market would not come under the purview of the taxable turnover under the KVAT Act.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N. Thulaseedharan Pillai**	**S. Anil Kumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner(Internal Audit)**
O/o CCT	**O/o CCT**	**O/o CCT**

To

Sri. Joshy Varghese, Mankada Trading Company,
Kothuparambil House, Vadakkangara Road,
Mankada, Malappuram – 679 324

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 – manufacturing and interstate sale of laboratory infrastructure and allied accessories - liability of works contract tax – Orders issued.

Read:- Application dtd. 22/6/2016 from M/s. Citizen Industries, Karnataka.

ORDER No.C3/20372/16/CT DATED 06/10/2016.

1. M/s. Citizen Industries, Karnataka has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether they are liable to pay any tax/works contract tax in Kerala state as they have raised all supply bills interstate only and paid full CST @ 14.5% at the origin state.

2. The applicant is registered under Karnataka Value Added Tax and Central Sales Tax Acts and is engaged in the manufacturing and sale of Laboratory Infrastructure and allied accessories.

3. The applicant has submitted that they had received Purchase Order from HLL Lifecare Limited, Thiruvananthapuram on behalf of the Director, NIIST, Industrial Estate, Pappanamcode for planning, designing, execution and commissioning of laboratory infrastructure and allied accessories in the silver jubilee block at NIIST Campus, Thiruvananthapuram.

4. The applicant has further submitted that they had manufactured the entire material at their Bangalore factory, Karnataka and dispatched against payment of

full CST 14.5% and that for the installation and commissioning at Kerala state no material is purchased from within Kerala state.

5. The applicant has requested to clarify their liability of tax on the above work in Kerala State.

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

7. The applicant produced copies of the purchase order, agreement with M/s. HLL Lifecare Ltd. and tender. As per the terms of the agreement, it is clear that the contract involves both a contract for sale, and a contract of work and labour. Thus, it is a composite works contract. Based on the said agreement/contract, goods were manufactured by the applicant at its factory in Karnataka, and transported to Thiruvananthapuram for being used in the execution of the works contract. The goods so supplied had to be approved by the authorized engineer of NIIST before the same could be used in the execution of the works contract. Thus, the interstate movement of goods was in pursuance of, and incidental to the terms of the said agreement.

8. The Supreme Court of India in the case Union of India Vs. K.G. Khosla and Co. Ltd. (43 STC 457) had held that what is really decisive is whether the sale is one which has occasioned the movement of goods from one State to another. The questions regarding interstate sale is to be answered on the basis of section 3 of the Central Sales Tax Act. The law requires that it should be levied and collected in the State from which the movement of goods commences. The movement of goods in pursuance of the agreement is the main criteria for fixing the situs of taxation [Bharat Heavy Electricals Vs. Union of India 102 STC 382]. A sale is an interstate sale under section 3, if there is a contract of sale preceding the movement from one state to another and the movement must be the result of this covenant [Indian Oil Corporation 47 STC 5]. In Builders Association of India Case [73 STC 394], it was held that if in the process of executing a works contract, a transfer of property in the goods take place outside the State, the State would have no power to levy sales tax on such a transfer. In Larsen and Toubro Ltd. Vs. Commissioner of Commercial Taxes (2003) 132 STC 272 (AP) it was held that, if movement of goods from outside the state was occasioned by contract and Central Sales Tax is paid in the State of origin, no local taxes are leviable.

9. If there is movement of goods from one State to another in pursuance of an agreement to execute a works contract, it is an interstate sale and the State from which such movement of goods commenced is the only State authorised to levy tax on such deemed sale. The State where works contract was executed has no authority to levy tax or make law to deduct tax upon it. In the instant case, the movement of goods are from outside the State of Kerala, in pursuance of an agreement for the execution of a works contract. As such there is an interstate sale as per section 3 of the Central Sales Tax Act, 1956 and such sale has occurred at the State where the goods were situated at the time of appropriation of such goods to the contract as per section 4(2) of the Central Sales Tax Act, 1956. Tax shall be collected by the Government in the State from which the movement of goods commenced as per section 9(1) of the Central Sales Tax Act, 1956.

10. In the circumstances, and as per the copy of tender and agreement produced before this authority, the transaction involved is an interstate works contract for which the applicant is not liable to pay any tax under the KVAT Act.

The issues raised above are clarified accordingly.

T.K. Ziavudeen Thulaseedharan Pillai	**Dr. A. Bijikumari Amma**	**N.**
Joint Commissioner (Law)	**Joint Commissioner (A&I)**	**Joint Commissioner (General)**
O/o CCT	**O/o CCT**	**O/o CCT**

To

M/s. Citizen Industries,
Survey No. 85,
Industrial Plot No. 33A, 33 Part, 34C,
KIADB Road, Chokkahalli Village,
Kasba Hobli, Hoskote, Bangalore,
Karnataka – 562 114

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. Bijikumary 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 – Applicability of compounded tax on works contracts for aluminium fabrication of doors, windows, false ceiling etc. – Orders issued.

Ref:- 1) Petition u/s.66 of KVAT Act, 2003 received from Bose K. Abraham, Kunnel Aluminium Works, YMCA Lane, M.C. Road, Kottayam on 05-08-2016
2) Clarification Order No.C3-23011/13/CT dtd.27-11-2013

ORDER No.C3-1216/2016/CT Dtd.15 / 10 / 2016

1) Sri. Bose K. Abraham, M/s. Kunnel Aluminium Works, Kottayam has preferred an application u/s.66 of the KVAT Act, 2003 as per reference 1st cited for rectification of the clarification order issued vide reference 2nd u/s.94 of the KVAT Act, 2003.

2) The applicant would contend that he is a registered dealer undertaking works contracts of fabricating and fixing windows, doors, ventilators, false ceiling etc. of buildings as per the designs, drawings, specifications and dimensions prescribed by the awarder and locally purchasing all the required materials and executes works at the site, as per the work orders in this regard and gets payment according to the square meter rates specified and agreed in the work order.

3) The applicant would contend that work orders in respect of all the works executed by them contains similar stipulations for the supply and installation of door, window etc. and not for purchase of any particular item. The assessee is not collecting any tax, in as much as it has been paying tax at compounded rates.

4) The question raised for clarification and considered in the clarification order as per reference 2nd cited were as follows:

(i) Whether the transfer of goods involved in the execution of works contract of fabricating and fixing of windows, doors, ventilators, panels, ducts, false ceiling etc. carried out by the assessee fall within the

purview of Section 6(1)(f) of the Kerala Value Added Tax Act, 2003; and

(ii) Whether the assessee is entitled to make payment of VAT at the compounded rate of 3% prescribed under Section 8(a)(i) of the Kerala Value Added Tax Act, 2003.

5) The clarification authority clarified the questions in the following lines:

> *"The nature of the work awarded to the petitioner has to be analysed in toto so as to arrive at a finding as to the nature of work awarded. Admittedly, as per the specifications and measurements given by the awarder, pre-fabricated materials are brought to the site and is installed in the premises. Since these fabricated materials were made for the specific requirements of the awarder, it is an item that cannot be sold generally. Hence it is works contract coming within the category in the form of goods. The installation part represents only a negligible portion of the work awarded since it involves mere fixing with screws. As laid down by the Hon'ble Supreme Court in Kone Elevators' case, when goods in knocked down condition are brought to the site and mere assembling alone is done, it is a case of transfer in the form of goods and no labour charges can be deducted. Also, in the instant case, since it involves transfer in the form of goods it is not eligible for compounding."*

6) Now the applicant preferred an application u/s.66 of the KVAT Act, 2003 for rectifying the said clarification issued earlier.

7) The authorized representative of the applicant was heard on 31-08-2016 in the matter and the contentions raised were examined.

8) The applicant would content that there occurred some mistake in appreciating the evidence furnished by him before the clarification authority regarding the nature of the works undertaken. It is contented that he never brought pre-fabricated doors and windows to the work site, after manufacturing the same in his work shop as observed by the clarification authority while issuing the clarification. He would claim that he execute the said works in site after purchasing the prescribed raw materials in required quantities and after incurring various direct and indirect over heads. He used to visit the site with his skilled labours and verify the exact measurements required for each and every windows, doors and frames etc. and only accordingly the materials are cut and worked using incidental materials like screws, beadings etc. and consumable like gums and sealants. He would content that he never supply ready-to-fix doors and windows etc. to the site, but manufacture at the site in the required measurement using the raw materials. The applicant contented that in the original application, clarification was sought for in a case where channel beams of 12 feet length is brought to site and was cut in the work site and then fixed to result in doors, windows etc. Nowhere in the application, the applicant has ever stated that pre-fabricated materials were brought in the site. Therefore, he would submit that the

fact submitted is wrongly considered and it is a mistake apparent on the face of the record.

9) As stated earlier the present petition u/s. 66 of the Act, 2003 has been filed for rectifying the original clarification order issued as per reference 2nd cited. In the said clarification, after verifying the facts and nature of work undertaken by the petitioner, the clarification authority clarified that it was a works contract where the transfer of property is in the form of goods and therefore not eligible for compounding system of payment of tax u/s 8 of the Act. The petitioner challenged the clarification order before the Hon'ble High Court of Kerala in OTA No.2/2014 and the same was upheld by the Hon'ble Court dismissing the appeal filed by the petitioner. It is to be noted that the petitioner had never raised the above contention before the Hon'ble High Court of Kerala regarding the factual error. Since the Hon'ble High Court of Kerala upheld the clarification order, this authority is not in a position to rectify the factual error now raised by the applicant.

10) The decision of the Hon'ble Supreme Court in the 2nd Kone Elevators case was rendered only after the issuance of the clarification under challenge. It is open to the petitioner to approach the assessing authority to prove his case, if the decision of the Hon'ble Supreme Court in the 2nd Kone Elevators case is applicable to him.

Accordingly the petition filed u/s.66 of the KVAT Act 2003 is rejected as it is not maintainable.

Joint Commissioner (Law) **Joint Commissioner (General)** **Joint Commissioner (A&I)**

To

Sri. Bose K. Abraham
Kunnel Aluminium Works
YMCA Lane
M.C. Road
Kottayam.

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 tax applicable for disposable plastic plates, cups, tumblers, trays, lids, containers – Orders issued.

Read :- Application dtd. 23/04/2013 from M/s. Kalyx Plasti-pack, Pappinisseri.

ORDER No.C3/12332/13/CT DATED 31/10/2016

1. M/s. Kalyx Plastipack has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of disposable plastic plates, cups, tumblers, trays, lids, containers etc.

2. The applicant would contend that they are the manufacturer and dealer of disposable plates, cups, tumblers, containers, trays, bowls etc made of plastics.

3. The applicant would submit 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 that they had no dispute with regard to rate of tax of the aforesaid items made of plastic, as items are specific.

4. The applicant has therefore requested to clarify the following points.

a. Which items would be considered as Disposable. Normally, the Manufacturers of Food Products or any other products or restaurants or hotels would consider the 'Containers for the packing of goods' of as Disposable; however, the end user may or may not reuse the same for his own use.

b. Explain the disposable plates. Normally, plate means a flat dish, typically circular or square from which food is eaten or served. Plates do not have

the ability for packing of foods. So, we feel that the trays, lids & containers do not fall under this category.

c. Explain disposable cups. Normally, cups means a small, bowl shaped container for drinking from typically up to a size of 130 ml. Above 130 ml, it is generally called as tumbler. Tumblers above 250 ml are generally used as packing material.

d. Explain disposable leaves.

e. Whether the increased rate would be applicable for disposable foam, thermocol, XPS (Cross-linked Polystyrene), paper plates, cups & leaves, which are manufactured out of plastics or are coated with plastics.

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

6. The applicant has sought clarification on 5 points which are clearly stated in the application. The first 4 points raised by the applicant are beyond the scope of clarification u/s. 94 of the KVAT Act.

7. Now, coming to the 5th point, it is hereby clarified that the tax rate of disposable foam, thermocol, and XPS (Cross-linked Polystyrene) was left unchanged by the Kerala Finance Act, 2013. The clarification sought as to the rate of tax applicable for disposable paper cups, plates or leaves manufactured out of plastic is not clarifiable. Either it should be made out of plastic or it should be made out of paper. But disposable paper plates, cups and leaves coated with plastic are not covered under Sl. No. 3 A of the table in clause (a) of Sec. 6(1) of the KVAT Act.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**N.**
Thulaseedharan Pillai		
Joint Commissioner (Law)	**Joint Commissioner (A&I)**	**Joint**
Commissioner (General)		
O/o CCT	**O/o CCT**	**O/o CCT**

To

M/s. Kalyx Plastipack,
Swaraj Plywood Road,
Pappinisseri, Kannur – 670 561

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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 (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. S. Anil Kumar.
Deputy Commissioner (Internal Audit),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Rate of Compounded tax on Crusher Machine – Orders issued.

Read:- Application dtd. 21/5/2015 from M/s. Vilamana Industries, Thrissur.

ORDER No.C3/18380/15/CT DATED 03/11/2016.

1. M/s. Vilamana Industires has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of compounded tax payable for a crusher machine with jaw size 30" x 4"(76.2 cm x 10.16 cm).

2. The applicant was heard in the matter and the contentions raised were examined.

3. The subject matter for clarification was examined earlier in two similar cases and as per Order No. C3/44783/09/CT dtd. 10/5/11 and C3/13096/11 dtd. 22/10/11 it was clarified that *'The size of the various machines referred in Section 8(b) of the Kerala Value Added Tax Act denotes the linear dimensions of the mouth of the crusher jaw, which, in turn, indicates to the intake volume of granite boulders/ metal for crushing, at a given point of time. This linear dimensions has to be multiplied to arrive at the appropriate mouth area, or jaw size*.'

4. In the light of the above clarifications, it is hereby clarified that the rate of compounded tax payable for a metal crusher with jaw size 30" x 4" is Rs. 3.20 lakhs from 2014-15 onwards.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N. Thulaseedharan Pillai**	**S. Anil Kumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner(Internal Audit)**
O/o CCT	**O/o CCT**	**O/o CCT**

To

M/s. Vilamana Industries,
Kuttichira.P.O.,
Chalakudy, Thrissur

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 tax of fryums – Orders issued.

Read:- 1. Application dtd. 29/10/13 from Sri.V.V.Faizal, M/s. Hiba Traders, Feroke.
2. This Office Order No. C3/32376/13/CT dtd. 13/11/14.
3. Judgment of Hon'ble High Court in OT. Appeal No. 2 of 2015 dtd. 17/11/2015.

ORDER No.C3/32376/13/CT DATED 02/12/2016.

1) Sri. V.V.Faizal, M/s. Hiba Traders, Feroke had preferred an application u/s.94 of the KVAT Act, 2003 seeking clarification on the rate of tax of gole pappad (fryums).

2) The applicant would contend that Entry 36 of the First Schedule covers all pappads whether it is manufactured out of pulses, rice, wheat etc. The applicant, placing reliance on the Order No. C3/49774/06/CT dtd. 20/01/2007 wherein it was clarified that *Applam is nothing but Pappad which is enlisted as serial No. 36 of 1st schedule to KVAT Act 2003, and so is a non-taxable commodity* and would contend that the same interpretation is applicable in the instant case also.

3) The applicant had also relied on the decision of the Hon'ble Supreme Court in Shiv Shakti Gol Finger Vs. Asst. Commissioner, Commercial Taxes, Jaipur to support his contentions. The request of the petitioner was to clarify the rate of tax of the commodity fryums.

4) The Authority for Clarification vide 2nd paper read above clarified as follows:

> *" Entry 36 of the First Schedule to the Act viz. Pappad does not have any HSN Code. As such, according to the Rules of Interpretation, common parlance or trade parlance test has to be adopted.*
>
> *Fryums is a snack made from dough with added colour and are in different shapes like mini-checks, buttons, short tubes, stars, mini wheels and 'O' rings. It has to be fried in oil before using.*
>
> *Pappads on the other hand, in trade parlance are thin flat and disc shaped food items based on dough made of mainly black gram flour and other flours. It is fried or cooked in dry heat. 'Appalam' is the Tamil word for 'Pappad'.*
>
> *So, in trade, 'fryums' and pappads are distinct, and the consumer also does not use the words interchangeably.*
>
> *As such, it can safely be concluded that fryums would not fall within the scope of Entry 36 of the First Schedule and hence, can aptly be classified under Entry 49(2) of the Third Schedule to the Kerala Value Added Tax Act, 2003, taxable at the rate of 5%."*

5) Aggrieved by this order, another dealer M/s. Chakkiath Brothers, Ernakulam approached the Hon'ble High Court of Kerala. The Hon'ble High Court vide its judgment read 3rd paper above had observed that

> *"We dissuade ourselves from further stating anything on this point, because the impugned clarification order was issued evidently without taking recourse to sub-section 1(A) of Section 94 where the manufacturer of the goods dealt with in the impugned order does not appear to have been heard, nor was any first seller other than the dealer which itself had sought for the clarification. We do not see from that order as to whether the manufacturer was from within the State of Kerala.*
>
> *The practical issue that arises from the dealer's point of view is that if there are no clear cut clarifications as to the types of goods which could get classified as 'pappads' and types of goods which could get classified as otherwise than 'pappads' including what is attempted to be stated at the Bar as 'fryums'; such a situation could lead to different anomalies in the assessment proceedings and penalty proceedings. Under such circumstances, we are of the view that the impugned clarification order has to be re-visited by the appropriate authority under section 94 and for such purpose, the said clarification is hereby vacated, paving way to the competent authority taking up the matter de novo and issuing notice to such dealers, including the dealer at whose instance that clarification order was issued, as also the dealer who is the*

appellant in this O.T.Appeal and any other dealer or manufacturer of goods as may be found necessary."

6) In view of the above facts, M/s. Hiba Traders (applicant), M/s. Venkitaramana Food Specialities Ltd., Puthucherry (the manufacturer from whom the applicant purchase the impugned commodity) and M/s. Chakkiath Brothers (appellant) had been informed to attend the hearing which was posted on 22/06/16. But, the authorized representative of M/s. Chakkiath Brothers requested that the hearing may be re-scheduled to another date and also submitted the names of major manufacturers of pappad/fryums (M/s. Venila Foods, Madurai & M/s. Noble Agro Food Products Pvt. Ltd., Ahmedabad) whose products are sold within the State and requested to hear them also. Considering the request, the matter was again posted for hearing on 20/07/2016. The authorized representative of M/s. Hiba Traders informed that they had filed all documents before the Commissioner at the time of issuing clarification and they had no additional documents to be produced. The authorized representative of M/s. Chakkiath Brothers appeared for hearing. But none of the manufactures turned up. Considering the judgment, the case was again posted for final hearing on 20/10/16. One of the manufacturers, Sri. K.Selvarajan, M/s. Venila Foods appeared and explained the manufacturing process. Considering the contentions raised by the applicant, appellant and the manufacturer and also upon the consideration of all relevant materials, the following conclusion is arrived.

7) The applicant has sought a clarification regarding the rate of tax applicable to the sale of gole pappad (Fryums). In support of his contention, the applicant has relied on the judgment of the Hon'ble Supreme Court in **M/s. Shiv Shakti Gol Finger vs. Assistant Commissioner, Commercial Taxes, Jaipur.** In the said case, the Hon'ble Supreme Court while interpreting the words 'Papad and Badi i.e. Mangori' used in a sales tax exemption notification, held that the notification did not intend to differentiate between gole or flat papad made of any ingredient. This judgment, however, is not applicable to the case on hand since the Hon'ble Supreme Court interpreted the word 'papad' in the context of the notification issued by the State of Rajasthan. In the said notification, the relevant entry covers the words "Papad and Badi", and the Hon'ble Supreme Court observed that the notification clearly mentioned that the word 'Papad' had been used as genus and its species were made from pulses, rice, maida, potato, sago, etc. However, in the case on hand, the Authority has been called upon to ascertain the tax rate, under the KVAT Act, in respect of the product dealt in by the applicant. And, for this purpose, 'papad' and fryums' have to be interpreted as understood in common parlance or popular sense.

8) M/s. Chakkiath Brothers, the appellant in OT.Appeal No. 2 of 2015 before the Hon'ble High Court of Kerala, has relied on the decision of the Hon'ble High Court of Karnataka in **State of Karnataka vs. Vasavamba Stores' [2013] 60 VST 19 (Karn)**, whereby, the Hon'ble High Court upheld the order of the Appellate Tribunal which held that "fryums" came within the purview of pappad under entry 40 of the First Schedule of the Karnataka Value Added Tax Act, 2003. The said decision, however, is not applicable to the present case since apart from extracting certain portions of the judgments delivered by **the Hon'ble Supreme Court in Shiv Shakthi Gol Finger and T.T.K.Health Care**, the Hon'ble High Court has not arrived at a separate finding based on a complete consideration of the issues, both fact-related and law-related, involved in that case. The Hon'ble High Court merely held that the judgment of the Shiv Shakti Gol Finger covered the issue on hand.

9) Now, 'pappad' is exempted from tax by virtue of Entry 36 of the First Schedule. However, this entry does not have HSN code. Hence, 'pappad' has to be interpreted in the same manner as is understood in common parlance or commercial parlance.

10) 'Pappad', as understood in common or commercial parlance is a thin wafer-like product, circular in shape, which is rolled from dough made out of black gram flour added with baking soda and salt. A well-kneaded mixture is then flattened into thin rounds and kept for sun drying.

11) On the other hand, 'fryums', as understood in common or commercial parlance is basically a cereal (flour and corn starch) based 'ready to fry' pellets. Wheat/sago flour, salt and baking powder are the main ingredients used in the preparation of fryums. Flour made from other sources such as rice, tapioca or potato can also be used.

12) A clear distinction between 'pappad' and 'fryums' can be established based on the following intelligible differentia –

i. Pappad, as understood in common or commercial parlance, is a thin, flat, disc shaped wafer-like product. Fryums, on the other hand, are 'ready to fry' pellets or small flakes which come in various colours, and shapes such as mini checks, buttons, short tubes, stars, wheels, spoons or 'O' rings.

ii. Pappad is known differently in different parts of the country. It is called 'pappadum' in Kerala; 'applam' in Tamil Nadu; 'happala' in Karnataka; 'papad khar' in Andhra Pradesh; and 'papri' in certain Northern States of the country. The commercially or commonly known 'fryums' is called 'vathal' in Kerala; 'vadam' or 'vathal' in Tamil Nadu; 'Sandiges' or 'Vadagams' in Karnataka; and 'Vadiyalu' in Andhra Pradesh.

iii. In Kerala, pappad is invariably used as an accompaniment with the afternoon meals. It is crushed and mixed up with rice, dal and ghee. It is also used as an accompaniment with the traditional breakfast, viz., 'puttu'. Fryums, however, is a snack which is eaten as a pastime. In other words, it is a savoury.

iv. Whereas pappad can either be fried, or cooked in dry heat; fryums are invariably fried in oil.

v. Pappad has a shorter shelf-life than fryums.

vi. In the retail market, 'pappads' are sold in packets, the MRP of which is determined on the basis of the number of pappads contained in each such packet, rather than the net weight of such packets. Fryums, however, are sold in packages, the MRP of which is determined only on the basis of the net weight of each such package.

vii. If one goes to the shop to buy pappad, the shop keeper will never give him fryums. Similarly, if one goes to the shop to buy fryums, the shopkeeper will never give him pappad. In other words, there is no confusion or doubt in the mind of either the consumer or the trader with respect to pappad and fryums being two distinct and clearly identifiable products.

13) Thus, it is a clear, from the above, that in the more popular or commercial sense, papad and fryums are two clearly distinguishable products, and one cannot be mistaken for the other. Though some people, including a small section of the dealer community, may use the two names loosely, the general view, prevalent among the consumers and a large section of the trade, is that papad and fryums are two distinct products. This distinction is based mainly on the popular notion regarding the physical characteristics and purpose of use. Hence, in the context of KVAT Act, entry 36 of the First Schedule ie., 'papad' will not include or subsume 'fryums'.

14) If that be so, then we would have to find out the entry under which 'fryums' will fall. Commercially speaking, fryums is an extruded savoury. Now, food extrusion is a form of extrusion used in food processing. It is a process by which a set of mixed ingredients are forced through an opening in a perforated plate or die with a design specific to the food, and is then cut

to a specified size by blades. Apart from the raw form, nowadays, in the market, fryums are also available in packaged, ready-to-eat form.

15) As per the Customs Tariff Act, 1975, papad has a specific HSN Code; viz., 1905.90.40. HSN Code 1905.90.30 of the said Act covers 'Extruded or expanded products, savoury or salted'. Under the KVAT Act, HSN code 1905 90 30 corresponds to Entry 49(2), which reads: 'savouries like chips, popcorn, murukku, achappam, pakoda, mixture, chikky items, kuzhalappam and similar preparations'. Hence, fryums would fall under Entry 49(2) of the Third Schedule, attracting tax @5%.

The issues raised above are clarified accordingly.

T.K. Ziavudeen	**Dr. A. Bijikumari Amma**	**N. Thulaseedharan Pillai**
Joint Commissioner (Law)	**Joint Commissioner (A&I)**	**Joint Commissioner (General)**
O/o CCT	**O/o CCT**	**O/o CCT**

To

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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 (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. S. Anil Kumar.
Deputy Commissioner (Internal Audit),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of plastic scrap and used plastic – Orders issued.

Read:- Application dtd. 20/6/2015 from M/s. K.I.Bawa & Sons, Muvattupuzha.

ORDER No.C3/22896/15/CT DATED 26/12/2016.

1. Sri. K.I.Faisal, M/s. K.I.Bawa & Sons, Muvattupuzha has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to the rate of tax of plastic scrap and used plastic.

2. The applicant is the partner of M/s. K.I.Bawa & Sons, Muvattupuzha and they are an assessee on the rolls of the Commercial Tax Officer, Muvattupuzha bearing TIN 32070419482. The applicant submits that they are dealing with scrap other than metal scrap like plastic items of used Fridge, TV, Washing Machine and some other used goods like broken plastic chair, vehicle bumper, computer body, PVC door and so many other items considered as waste materials.

3. The applicant has requested to clarify whether the plastic scrap and used plastic are one and the same and if so what is the rate of tax and whether included in the 1st schedule or in the 3rd schedule of the KVAT Act.

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

5. Plastic scrap was included in sub-entry (15) of entry No. 118 of the List A to the third schedule. Sub-entry 15 reads as under.

(15) Waste, chips, parings and scrap of plastics including	
recycled plastic	*3915*

6. By virtue of Finance Act 2016, this entry was amended w.e.f. 18-07-16 by deleting the words 'waste, chips, paring and scrap of plastics'. 'Used plastic and electronic waste' are included under entry No. 63 of the First schedule of the KVAT Act by KFA 2015. This entry was amended by KFA 2016 to include 'plastic scrap, waste chips, parings'. Now, entry No. 63 of the First Schedule reads as under w.e.f. 13-11-2016.

63 Used Plastic including plastic scrap, waste chips, parings and electronic waste *****

7. As such by virtue of specific inclusion of the words 'plastic scrap' in entry 63 of 1st schedule by KFA 2016, plastic scrap would be taxable @5% upto 12-11-16 and will be exempted w.e.f. 13-11-16.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma	**N. Thulaseedharan Pillai**	**S. Anil Kumar**
Joint Commissioner (A&I)	**Joint Commissioner (General)**	**Deputy Commissioner(Internal Audit)**
O/o CCT	**O/o CCT**	**O/o CCT**

To

Sri. K.I.Faizal,
M/s. K.I.Bawa & Sons,
Muvattupuzha.