

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
UNDER SECTION 94 OF THE KERALA VALUE ADDED TAX ACT, 2003
DEPARTMENT OF COMMERCIAL TAXES, KERALA.**

Members present are:

1. B.S. Thyagarajababu, Joint Commissioner (General), O/o.CCT, Tvpm.
2. Senil A.K. Rajan, Joint Commissioner (Law), O/o.CCT, Tvpm.
3. V. Syamkumar, Joint Commissioner (A & I), Tvpm.

Sub:- KVAT Act, 2003 - Clarification issued to M/s. Sree Padmanabha Enterprises based on the direction of Hon'ble High Court in Judgment OTA 5/2006 - Orders issued - reg.

Read: (1) Letter From Sri.Vyas Dev.M.Kammath on behalf of M/s.Sree Padmanabha Enterprises dtd.19-07-2019.

(2) Letter No. KVATA/1260/2019 dtd.19-07-2019 of Deputy Commissioner (Appeals) III, SGST Dept., Ekm.

ORDER No.C3-20275/2017/CT DATED 26.08.2019

The applicant was a registered dealer bearing TIN 32010738952 and cancelled registration with effect from 31-03-2012. The dealer filed return up to 2011-12 with NIL turnover. On 19-07-2019, one of the partners Mr. Vyas Dev M. Kammath filed a request before the Commissioner stating that as per the Judgment of Hon'ble High Court of Kerala in OTA No.05/2006 dtd.26-05-2008, the Division Bench directed to Commissioner to re-clarify the tax rate of brass sanitary wares. Accordingly, the matter was examined in detail.

As per the Clarification No.C8/48888/2005, dtd.08-03-2006, the Commissioner of Commercial Taxes had issued a letter to M/s.Sree Padmanabha Enterprises stating that brass items were taxable at the rate of 4% as per Entry 3 sub-entry (2) of the Third Schedule to the KVAT (Amendment) Act, 2005. Subsequently, on 04-10-2005 M/s.Sree Padmanabha Enterprises requested to clarify whether the following sanitary items were taxable at the rate of 12.5% or 4% as enumerated in the Third Schedule.

1. Brass fittings i.e., Elbow, Tee, Socket, Union, Hex Nipples, Hose Color, Pillar tap Inner fittings etc.

2. Bib Cocks Brass or C.P., Brass Ball cock, brass Long body Bib cock C.P., Brass Short Body Bib Cock C.P., Brass Sink Cock C.P., Brass Angle Cock C.P., Brass Wall Mixers C.P., Bras Showers C.P., Brass shower Arm C.P., Brass Foot valve etc.

Based on this request, as per Ir.no.C8-48888/2005CT, dtd.27-04-2006, it was informed to the petitioner that all sanitary items were taxable at 12.5% under Entry 101 of the List of 12.5% published as per SRO No.82/2006, dtd.21-01-2006.

Meanwhile, as per reference 2nd cited, the Deputy Commissioner (Appeals), Enakulam has pointed out that M/s. Cochin Sanitary Stores, a dealer in sanitary items has come up with an appeal challenging assessment and penalty proceedings completed against him. All these proceedings are related to the issue of rate of tax on brass items. The dealer misclassified the sales turnover of bath fittings as metallic product in the Return. The argument raised by the dealer is that clarification issued by the Commissioner as tax rate of brass fittings at the rate of 12.5%, vide Order No.C8/48888/2005/CT, dtd.08-03-2006 was set aside by the Hon'ble High Court and directed the Commissioner to re-clarify this issue.

No application for clarification under Section 94 of the Kerala Value Added Tax Act was filed. However, the Committee has examined the issue based on the direction of the Hon'ble High Court, as pointed out by M/s. Padmanabha Enterprises and Deputy Commissioner (Appeals), Enakulam, as per reference 1st and 2nd cited above. Accordingly, an opportunity was given to the dealer and Adv. K.U. Vijayan appeared before the authority on behalf of one of the partners, Mr.Vyas Dev M. Kammath. According to him, under KGST scenario, water supply and sanitary equipments and fittings were classified as per functional or user test. But, as per KVAT Law, classification is restricted only based on HSN code. Articles of brass is an item coming under the Third Schedule of KVAT Act, as per Sl.No.3(2), having HSN 7419.99.30. Therefore, brass pipe fittings of different types will also come under the classification 'articles of brass'. Department has not so far raised any contention that pipe and fittings being used for sanitary purpose

has to be taxed under Sl.No.101 of SRO.No.82/2006. The clarification issued by the Commissioner stating tax rate of brass items as 12.5% was set aside by the Hon'ble High Court in OTA No.5/2006 on 26-05-2008. The levy of tax at higher rate and imposition of penalty alleging non-payment of higher rate of tax is absolutely unlawful and against the decision of the Division Bench in OTA 5/2006. Department has not so far raised any demand for higher rate of tax on sale of pipe and fittings used for sanitary purpose. Therefore, any collection of tax in excess leads to unauthorized collection of tax. The department has taken an arbitrary and unreasonable due by including articles of brass under sl.no.101 of SRO.No.82/2006. The Apex Court in Reckit Benckiser (India) Ltd. Case [2008 (15) VST 10], held that an item appearing in Schedule III, aligned with HSN code, cannot be transported to any other schedule. The Court adopted the same principle in State of Kerala Vs. M.P. Agencies [(2015 KHC 3388 (SC))]. Therefore, it is stated that brass articles appearing in Third Schedule is aligned with HSN code 7419.99.30 and no items in sl.no.101 of SRO.No.82/2006 is aligned with the same HSN code. It is also stated that in the light of the decision of the Division Bench of Hon'ble Court in OTA 5/2006, setting aside re-clarification holding the goods in question as taxable at 12.5% and directing the Commissioner to further re-clarify the matter, the assessee was not bound to collect tax at higher rate till re-clarification is issued by the Commissioner. It is submitted that even after expiry of 11 years, no re-clarification has been issued by the Commissioner, as directed by the Hon'ble High Court in OTA 5/2006.

The view taken by the Department with respect to classification of articles of brass is that it is a commodity falling under water supply and sanitary fittings in common or commercial parlance. The common parlance rule, will be applicable only when the commodity in question is not aligned with a HSN Code. In the instant case, there is no dispute that the articles of brass covered by a specific entry 3(2) of Schedule III are aligned with HSN code 7419.99.30. The matter was examined in detail. The items covered under sl.no.3 of Third Schedule to KVAT Act are "articles and other utensils of aluminium, brass, bronze, copper, cadmium, lead, zinc, iron or steel, nickel, tin,

and other base metals other than those specified in any other schedule". Under this head, the articles of brass has a specific HSN code 7419.99.30 alone will attract 4% tax category. It means articles made up of brass alone will come under this category. The word 'other than those specified in any other schedule' means exclusion of items having specific entry. As per Entry 101 of SRO.No.82/2006 "*water supply and sanitary equipments and fittings of every description including storage tanks other than those made of PVC, sinks, wash basins, wash basin pedestals, taps, bath showers, bidets, water closet pans, flushing cisterns, urinals, commodes, man-hole covers used in connection with drainage and sewerage disposals, parts and accessories thereof*" are taxable at the rate of 12.5%. Sanitary wares are specifically classified under HSN 7418.20.10 and parts thereof are specifically classified under HSN 7418.20.20. 'Chromium plating' products are commonly known as C.P. fittings, which are used as sanitary fittings or parts. Copper and articles thereof comes under the Customs Tariff Chapter 74. As per this Chapter, copper - zinc -base alloys are classified as brasses. Articles of brass covered under HSN 7419.99.30, attracting 4% tax, as specifically classified under Chapter III of Third Schedule under the Classification of main category, 'Utensils'. Whereas sanitary ware and parts thereof of copper, are specifically classified under the heading 7418 and brass products used as sanitary ware come under HSN 7418.20.10 and parts 7418.20.20.

C.P. fittings are usually used as bath fittings. As per Order No.C7-16374/06/CT, dtd.19-05-2006, Commissioner of Commercial Taxes has clarified that water supply and sanitary equipments and fittings of every description are taxable at the rate of 12.5%. Therefore bath fittings viz., C.P. taps, wall mixture etc. are taxable at the rate of 12.5%. It is also clarified as per Order No.C7-15028/06/CT dtd.29-06-2006, that water supply and sanitary equipments and fittings of every description are taxable at the rate of 12.5%. Therefore, the items bath fittings are taxable at 12.5%. From these clarifications, it is un-doubted-fully clear that sanitary equipments and fittings of every description come under 12.5% taxable category.

The Hon'ble Supreme Court in Addl. Commissioner (Legal), Commercial Taxes, Rajasthan & another Vs. Lohiya Agencies & another reported in (2019) 27 KTR 346 (SC) held that for interpretation of entries in taxation statutes -the 'common parlance test' is to be applied. The common parlance test means, while interpreting the entry for the purpose of taxation, recourse should be made to the meaning attached to them. By applying the utility test, articles and other utensils made up of brass are coming under entry 3 of 3rd Schedule and taxable @4% and sanitary wares of any description made up of brass squarely come under Entry 101 of SRO.No.82/2006 and taxable @12.5% during the period.

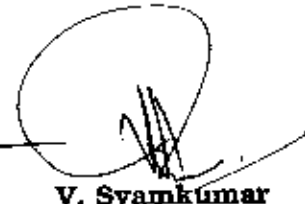
For the above explained reasons, it is legally and safely concluded that the following items are taxable @12.5% during the relevant period.

- (i) Brass fittings i.e., Elbow, Tee, Socket, Union, Hex Nipples, Hose Color, Pillar tap Inner fittings etc.
- (ii) Bib Cocks Brass or C.P., Brass Ball cock, brass Long body Bib cock C.P., Brass Short Body Bib Cock C.P., Brass Sink Cock C.P., Brass Angle Cock C.P., Brass Wall Mixers C.P., Bras Showers C.P., Brass shower Arm C.P., Brass Foot valve etc.

The issue raised is clarified accordingly.


B.S. Thyagarajababu
Joint Commissioner(General)


Senil A.K. Rajan,
Joint Commissioner(Law)


V. Syamkumar
Joint Commissioner(A&I)

To

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