

**11. PROCEEDINGS OF THE COMMISSIONER, COMMERCIAL TAXES  
THIRUVANANTHAPURAM**

Present: Sri.Paul Antony.IAS

Sub:- KVAT Act 03- Clarification U/s 94- Application filed by  
Dr. M. Raveendranath, Hon. Secretary, IDA, Kerala branch- orders  
issued- Reg:

Read:- 1. Application in form no. 24 dt. 18.11.05  
2. Hearing Notice No.C7.55397/05/CT Dt. 04.01.06

**ORDER No.C7.55397/05/CT Dt. 13.02.06**

Dr.M.Raveendranath, Hon. Secretary, Indian Dental Association, Kerala State has sought for clarification under section 94 of the KVAT Act 2003 on the following issues.

As per entry No. 36(25) artificial teeth and dental fittings are taxable. In the rules of interpretation, it is stated that first schedule pertaining to exempted goods does not take in artificial teeth and dental fittings. Hence a clarification is requested on whether the following dental prosthetic devices set by them to suit individual requirements are liable to be taxed.

1. Artificial Teeth
2. Denture
3. Dental crown
4. Dental bridge
5. Dental implants.

The contention of the applicant is that the above items are not saleable commodities but devices similar to orthopedic appliances or accessories used for physically handicapped treating the tooth as a human limb. He further contended that artificial parts of the body appearing in entry 3(2) of the first schedule equally applied to the dental prosthetic devices and is hence liable to be exempted from tax.

The authorised representative of the applicant was heard. The applicants' contention is that a tooth is like a limb and hence aids appliances are to be exempted. He further argued that tooth set is not a marketable item, since one set made for one patient can not be used by another, and that an item if not marketable can not be taxed. It is stated that the skill of a dentist needs to recognize and hence dentists may be exempted from payment of tax under VAT.

The contentions of the applicant have been analysed in detail. Artificial teeth and dental fittings are taxable @ 4 % under entry 36(25) of 3rd schedule to KVAT Act 2003. The contention of the applicant that prosthetic devices are not marketable has no force. Even if it is not marketable, it has a commercial value. There is a transfer of property from one person to another in the course of business not free of cost, but certainly for consideration. Any transfer of goods for consideration amounts to sale. Any sale is exigible to tax under KVAT Act, 2003.

The other contention that dental prosthetic devices are like orthopedic appliances is not correct. Orthopedic appliances are those appliances, which are used to make bones grow straight where as prosthetic devices are used to take the

place of a missing one. Different application cannot be treated as one and the same. There is no discrimination in taxing prosthetic devices.

The point sought for clarification is nothing but the logic behind the levy of tax on dental prosthetic devices. It is understood that Indian Dental Association Kerala has filed a writ petition before the Hon'ble Court challenging levy of tax on prosthetic devices.

As per section 94 of the KVAT Act 03, Commissioner is empowered to issue clarification only on the following, viz; if any dispute arises otherwise than in a proceedings before any appellate or revisional authority or in any court or tribunal as to whether the purpose of this Act.

- a) Any person is a dealer or
- b) Any transaction is a sale or
- c) Any particular dealer is required to be registered, or
- d) Any tax is payable in respect of any sale or purchase or if tax is payable the point of sale and the rate there of, or
- e) Any activity carried out in any goods amounts to or results in the manufacture of goods, such dispute shall be decided by the Commissioner on application by a dealer or any other person.

In the instant case, the point sought for clarification does not come under any of the issues mentioned in sub-clause (a) to (e) of section (i) of section 94 of the KVAT Act 03. Accordingly the application for clarification is rejected.

Sd/  
Commissioner