

**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 lamp oil - Orders issued.

Read:- Application dtd. 12-04-13 from M/s. KOG-KTV Food Products (India) Pvt. Ltd.

**ORDER No.C3/11481/13/CT DATED 03/07/2017**

1. M/s. KOG-KTV Food Products (India) Pvt. Ltd. has preferred an application U/s. 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to the rate of tax of lamp oil.

2. The applicant has submitted that he intends to market 'lamp oil' through the branches in Kerala. Lamp oil is produced by adding 0.01% by weight of sugandha dravias to edible palm oil, in order to give a pleasant odour to palm oil, which is manufactured in the applicant's factory in Tuticorin. The use of lamp oil is for lighting lamps at home, temple and performing religious rituals.

3. The applicant would contend that the item 'lamp oil', which is obtained by adding 0.01% of sugandha dravias to palm oil, which is an edible oil falling under entry no. 38(4) of the third schedule of the KVAT Act, is not a new product other than palm oil since 99.99% of lamp oil is palm oil. When 0.01% of sugandha dravias is added to palm oil, edible oil becomes inedible and 'inedible palm' oil is specifically included under Schedule III of the commodity list. The applicant would further contend that when the Commercial Taxes Department itself has classified 'inedible palm oil' as an item coming under the III schedule as per its commodity list, it can be

said that 'lamp oil' which is inedible palm oil falls fairly and squarely under the III schedule of the Act taxable @5%. The word 'inedible' means not to fit or suitable for eating and some of its synonyms are uneatable, unconsumable etc. When sugandha dravyas are added to palm oil it becomes inedible and even though it is called lamp oil on the basis of its use, it comes under the generic term 'inedible palm oil'.

4. The applicant would also contend that lamp oil is never marketed as perfumery. The applicant placing his reliance on the decision in **Union of India Vs. Sonic Electro Chem P Ltd** [2002 (145) ELT 274 (SC)] would contend that applying the principle laid down therein i.e. commercial identity of the article as known to the market is relevant for the purpose of classification, lamp oil is not to be treated as odoriferous preparation in the absence of such recognition by the trade.

5. The applicant would then contend that in **Commissioner Vs. S.N. Products** [2006 (200) ELT 342 (Tri)] it was held that coconut oil with the addition of Vitamin E is classifiable under Heading 15.03. In **Commissioner Vs. Consumer Plastics P Ltd.** [2006 (194) ELT 214 (Tri)] it was held that epoxidized vegetable oil used in plastic industry was classifiable under Chapter 15 of the Central Excise Tariff. The applicant contends that these two case laws make it clear that to get classified in Chapter 15 of the Central Excise Tariff, the oil need not be edible one.

6. The applicant would further contend that the primary and essential purpose of the product is burning the lamp. The applicant placing reliance on Rule 3(b) of the General Rules of Interpretation states that where the goods are a mixture of different substances, the classification has to be determined on the basis of the essential character i.e. the substances which gives the essential character of the product. The classification has to be made in the Heading which is suitable for the material which gives the essential character for the product. Applying this rule, the essential character is given by the oil and not by the perfumery. Hence, the applicant would contend that the lamp oil is classifiable under Heading 1511.90.20 since it is made of palm oil. The applicant has also submitted copy of their Central Excise Return wherein the product has been included in CETSH No. 15119020 with the Description Vegetable Lamp Oil.

7. The applicant would further contend that the **Hon'ble Supreme Court of India in Collector of Central Excise, Shilling v/s. Wood Craft Products Ltd.**

has held that resort can be made to a residuary entry only when by liberal construction the specific entry cannot cover the goods in question. Again the **Hon'ble Supreme Court in State of Maharashtra v/s. Bradma of India Ltd.** has held that the general principle is that specific entry could override a general entry. **The Hon'ble Supreme Court in State of Karnataka and Others v/s. Balaji Computers and Others** has held that as per the rule of 'Contemporanea Exposito' the construction adopted by administrative authorities be given much weight and highly persuasive.

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

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

10. The applicant has sought the tax rate of 'lamp oil' which is produced by adding 0.01% by weight of sugandha draviyas to edible palm oil which is used for lighting lamps at home, temple, and for performing religious rituals. When sugandha draviyas are added to edible palm oil, the form of the latter changes from 'edible' to 'non-edible'. However, in this process no new product is manufactured.

11. As per guideline vi (25) of the 'Rules of Interpretation of Schedules', mentioned in the appendix to the KVAT Act, *Entry 38 of the 3<sup>rd</sup> schedule includes only the edible grade of vegetable oils. Non-edible grade of vegetable oils would come under entry 138 of the 3<sup>rd</sup> schedule.*

12. In the light of the above, it is clarified that 'lamp oil' would come under entry 138(4) of the third schedule to the KVAT Act bearing the HSN code 1511.90.90, and, hence, would be taxable at 5%.

The issues raised above are clarified accordingly.

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

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

**N.  
Joint  
O/o CCT**

To

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