

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
Joint Commissioner (General)

Dr. A. Bijikumari Amma
Joint Commissioner (Law)

V.J. Gopakumar
Deputy Commissioner (General)

To

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