

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.V. Kamala Bai.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. Suchala Kumar. S.K.
Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. Mathew Thomas.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub:- KVAT Act, 2003 - Clarification U/s 94 - Rate of tax of Hook and Loop Tape Fasteners - Reg.

Read:- Application from M/s. Kerala State Small Industries Association, Kalamassery, dtd. 17/7/2012.

ORDER No.C3/24037/12/CT DATED 23/3/2013.

1. M/s. Kerala State Small Industries Association, Kalamassery 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 'Hook and Loop Tape Fasteners'.

2. The applicant is an association of small scale industries within the State of Kerala. The applicant would contend that 'Hook and Loop Tape Fastener' is a type of narrow woven fabric. It is a textile tape used in different applications for fastening purposes. It is a combination of two separate woven tapes, one called the 'hook tape' and the other called a 'loop tape' which when placed in contact with each other displays excellent fastening properties. Narrow fabrics are those textile products which are limited by the width dimensions and they are generally categorized for being less than 30cm width but mostly are of less than 125mm width. Prominent examples are Hook and Loop Tape Fasteners, Elastic tapes, Webbing tapes, Ribbons etc.

3. The applicant would further contend that narrow woven fabrics are used by footwear manufacturers for use in the manufacture of foot wears by them. Narrow woven fabrics (Hook and Tape Fasteners) are falling under HSN 5806 of the Customs Tariff Act. The Central Excise Department has classified this item as falling under HSN 5806. The applicant would contend that the commodity 'Hook and Loop Tape Fastener' is entitled for exemption by virtue of Entry 51(8)(f) of

the First Schedule to the Kerala Value Added Tax Act, 2003. The applicant has requested to clarify the rate of tax of the commodity.

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

5. 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 examined the impugned issue in detail. The said writ petition was filed seeking to set aside the clarification No.66/2006 dated 18/4/2006 issued by the Commissioner of Commercial Taxes, Chennai. The Commissioner had clarified that 'Hook and Loop Tape Fasteners' otherwise called 'Velcro Fastener' is an article of narrow woven fabrics, falling under the Excise Chapter Heading No. 58.07 and is taxable at 12% under residuary entry 40, Part D, First Schedule to the Tamil Nadu General Sales Tax Act. The Hon'ble High Court had examined all the relevant aspects including the Central Excise classification of the product in its judgment dated 27/4/2010. The Hon'ble High Court in Para 17 of the judgment observed that *'It is un-understandable as to how The Commissioner of Commercial Taxes can treat a specific commodity as residuary commodity of being labels or badges or similar article of textile material when there is already a specific Entry in 58.06 available in Additional Duties of Excise (Goods of Special Importance) Act, 1957'*. The Hon'ble Court also observed that *'The Commissioner's finding in the impugned clarification is that the Hook and Loop Tape Fasteners, which was Velcro, was commercially different from narrow woven fasteners. This conclusion was drawn applying an incorrect user test. It has always been held that the user test is not conclusive for the purpose of classification'*. Hon'ble High Court in Para 20 of the judgment held that *'The impugned order in so far as bringing it under Entry 58.07 is totally repugnant. If an Entry is already covered by the specific Entry, the question of relegating it as residuary entry will not arise'*. The operative portion of the judgment, as relevant to the context, is extracted hereunder :-

41. While issuing clarification, it is mandatory for the Commissioner of Commercial Taxes to write a speaking order. After referring to the relevant materials placed by the assessee, the Commissioner of Commercial Taxes simply rejected the stand of the dealers and held that the entry 58.06 will not apply and the materials produced are not satisfactory. It cannot be said that the dealers have not provided legally sustainable materials. On the other hand in the absence of any clear definition, the definition of the State enactments on the clarification issued therein also will have to be taken into account. In the present case, it was clearly demonstrated that the product in question is a narrow woven fabric. Merely because it is described

differently, it cannot be taken out of purview of the entry 58.06 under the appendix to the ADE Act. The attempt made by the Commissioner to bring it in some other head, i.e. 58.07 does not stand to reason as it is neither badge nor label nor similar article of textile materials in the piece, in strips or cut to shape or size. It is a strange interpretation arrived at by the Commissioner only for the purpose of taxing the petitioners/dealers. It goes against the earlier understanding of the very same Commissioner covered by the circular, dated 7.4.1989, wherein the Department followed the Central Excise Authorities Act, 1985 and held that they have not asked for local sales tax.

42. As rightly contended, for arriving at such a conclusion, the Commissioner never gave any notice to the dealers and it is his own decision based on ipse - dixit. Once it is not a commodity under 58.07, but once it is squarely covered under 58.06 subject to the Excise Act and ADE Act, 1957, this Court is empowered to direct the respondents to statutorily grant exemption provided under Section 8 of the TNGST Act. If the State wants to levy even that particular commodity, it is well open to them to declare it as liable for tax, but cannot include it under some other wrong entry and then to levy tax only for the purpose of maximizing the State's revenue. The clarification issued by the Commissioner of Commercial Taxes does violence to the language found in the relevant entry.

43. In the light of the above, W.P. No. 11761 of 2006 will stand allowed and the impugned clarification stands set aside. It is hereby declared that the Hook and Loop Tape Fastener called as Velcro Fastener is coming under Entry 58.06 and not liable for tax in view of Section 8 of the TNGST Act.

6. In view of the facts stated supra, it is 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.

The issues raised above are clarified accordingly.

T.V. Kamala Bai
Joint Commissioner (Law)

Suchala Kumar. S.K.
Joint Commissioner (A&I)

Mathew Thomas
Joint Commissioner (General)

To,

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