

**25. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM**  
Present:- Paul Antony.IAS

Sub:- KVAT Act 2003 - Clarification under section 94 – Rearing of Chicks –Tax liability of Live Chicken - clarified-orders issued – reg:

Read:- (i) Application dt. 2-3-2007 put in by Sri. U Manikandan, M/s Mani Poultry farm, Anamooli, Thenkara, Mannarkkad, Palakkad.

(ii) Application dt. 2-3-2007 put in by Tina Krishnan, M/s Anjali Poultry farm, Mattathukad, Mannarkkad, Palakkad.

**ORDER No.C3-9459/07/CT Dated 14-05-2007**

Sri. U Manikandan, M/s Mani Poultry farm, Anamooli, Thenkara, Mannarkkad, Palakkad and Smt Tina Krishnan, M/s Anjali Poultry farm, Mattathukad, Mannarkkad, Palakkad have filed separate applications read above under section 94 of KVATAct 2003, seeking clarification as to whether a dealer who purchases chicks within the state from registered dealers after paying VAT, rears the same and sells the grownup poultry, can be called the first seller in respect of the poultry and will be liable to tax accordingly..

Since common points are raised by the two parties the matter is clubbed and disposed off together.

The applicants were given opportunity of being heard. The authorized representatives of the applicants appeared and were heard. The contentions of the applicants were that Chick and Live chicken is one and the same commodity. The activity carried out by the applicant is only feeding of the 'day old chick' for thirty four days and selling the 'thirty five days old chicken'. If the the thirty five days old live chicken is to be treated as a different commodity, the activity carried out by the applicant would tantamount to manufacture. Relying on the definition of 'manufacture under clause (xxvi) of section 2 of the KVAT Act, 2003 the applicant contends that feeding the chicks does not come under any of the activities mentioned in

the said definition. In support of the contention the applicant had also relied on the decision of Hon'ble Supreme Court in Dy. Commissioner Vs Pio Food Packers, (1980)46 STC 63, where in the principle of 'manufacturing' was considered in general. Referring to sub entry (14) of Serial number 31 of 1<sup>st</sup> schedule to KVAT Act, 2003 and 'Webster's Encyclopedic Unabridged Dictionary of the English Language' the applicant contends that KVAT Act,2003 treats chicken, irrespective of its age as a single commodity and hence by feeding day old chick no new commodity is produced and so no manufacturing takes place to treat them as different commodity. It was also contended that the applicants are entitled to pay tax under sub section (5) of section 6 subject to other conditions. The contentions put forth were examined in detail.

The only question to be answered in this case is whether 'rearing of chicks' tantamount to manufacture within the meaning of KVAT Act, 2003.

It is a settled position that chicks are 'general goods' and not live stock. The Hon'ble Supreme Court of India in "Indian Poultry and Others Vs Sales Tax Officers, Rajnandgaon and others (1999) 113 STC 0507 W-SC" had considered the very same issue and held that 'rearing of chicks over a period of five weeks under strict control of air, temperature, standardized feeding, medication and chemicals and sale of Broilers that resulted amounted to manufacture of goods within the meaning of the MP Sales Tax Act.

The KVAT Act, 2003 holds a definition to the term 'manufacture' similar to that in the Madhya Pradesh Sales Tax Act which the Apex Court had considered for recording the said findings.

The term 'manufacture' is defined under clause (xxvi) of section 2 of the KVAT Act, 2003. Going by the said definition, inter-alia 'making any goods' will also tantamount to 'manufacture. The activities carried out by the applicant is making of the goods for market and so will amount to manufacture of goods within the meaning of the KVAT Act, 2003.

After considering all aspects of 'rearing of chicks', the Hon'ble Apex Court in the said case had entered into a conclusive finding that 'preparing of any goods for market is a process of manufacture. The reasoning adopted and findings entered into by the Hon'ble Apex Court are applicable and binding on the issue under consideration.

Further following the dictum laid down by the Hon'ble Apex Court in Deputy Commissioner of Sales Tax v. A.B. Ismail [1986] 62 STC 394 (SC), both in commercial circles and in common parlance, chicks and chicken are considered as two different things having a distinct individuality of their own. In pre VAT scenario also the issue was considered in C P Jose and Others Vs State of Kerala and others (2005) 139 STC 0015 (Ker) and are treated as two distinct commodities for the purpose of taxation. The decision in Dy. Commissioner Vs Pio Food Packers, (1980)46 STC 63 mentioned by the applicant in support of their contentions is not relevant in deciding the issue in view of the specific findings of the Apex Court in "Indian Poultry and Others Vs Sales Tax Officers, Rajnandgaon and others (1999) 113 STC 0507 W-SC" discussed *ibid*.

In the result the process of rearing of chicks tantamount to manufacture within the meaning of KVAT Act, 2003. So sale of grown up poultry after rearing chicks purchased locally tantamount to first sale within the state and are liable to pay tax accordingly and such dealers are not entitled to pay tax under sub section (5) of section 6 of KVAT Act, 2003.

The issues raised are clarified accordingly.

**Commissioner**