

3. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPURAM
Present:- Paul Antony. IAS

Sub:- KVAT Act 03-Clarification U/s. 94- Tax liability- Hand made safety matches manufactured outside the State- Reg:

Read:- Application put in by S.Marimuthu, Tobacco dealer, Aluva

ORDER No.C3.41939/07/CT Dt. 05.01.08

S.Marimuthu, Tobacco dealer, Aluva has preferred an application U/s. 94 of KVAT Act 2003 requesting to clarify the tax liability of Handmade safety matches manufactured outside the state.

The authorised representative was heard and contentions raised were examined in detail. The points for clarification are:

1. Is any tax to be paid under KVAT Act in respect of sale of handmade safety matches manufactured outside the State;
2. If not whether any conditions are to be fulfilled for availing the exemptions under entry 24 of 1st schedule.
3. What are the criteria to decide whether safety matches is handmade or not;
4. Does entry 24 of 1st schedule contemplate production of certificate issued by the Department of Central Excise.

At the time of hearing it was contented that since the item stands exempted from Central Excise Tariff no certificate to the status of the product could be made available from the Central Excise Department.

By notification 6/2002 certain exemptions on certain goods were granted which interalia includes safety matches also.

The relevant entry is covered under serial number 65 to the table of the notification which is extracted hereunder;

65	OMITTED 3605.10 or 3605.90	Matches, in or in relation to the manufacture of which any one or more of the following mechanical processes is ordinarily carried on with the aid of power, namely:- i) the process of giving a) the cardboard flats or strips, the configuration of a match box including the outer slide or inner slide, or b) the veneer flats or strips, the configuration of a	Rs.2 per hun dred boxe s/pa cks	8
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		match box including the outer slide or the inner slide with the use of match paper; ii) frame filling iii) dipping of splints in the composition for match heads; iv) filing of boxes with matches; v) pasting of labels on match boxes or veneers or cardboards vi) affixing of the Central excise stamps; and vii) packing and cleared for home consumption packed in boxes of 50 matches each		
	Explanation:	Excise duty for matches packed in boxes containing any number other than 50 matches shall be calculated on pro-rata basis.		

But proviso to the clause (b) of the said notification specifies that the said exemption is not there on or after the 1st day of April 2002. The relevant entry to the notification as available in the website is extracted below:

“Provided that nothing contained in this notification shall apply to goods falling under sub-heading no. 3605.10 against Serial Nos 65,66,67 and 68 of the said table on or after the 1st day of April 2002”.

It is clear that exemption from tax is conditional to production of certification from the Central Excise Department.

Out of the four points only point (1) can be entertained U/s. 94.

Handmade safety matches means safety matches made by hand. There is a mechanized sector also for production of the commodity. It appears that no separate HSN is provided for handmade safety matches while safety matches in general hold the HSN 3605.00.10.

The commodity in question is “hand made safety matches” is an exempted item by virtue of entry 24 of the 1st schedule. So no tax under KVAT Act would be payable in respect of sale of handmade safety matches even if it is manufactured outside the state. But while claiming an exemption under the Act, the onus of proving that the dealer is entitled for exemption, is on the person who claims the exemption. Only handmade safety matches are exempted. Even though the requirement of proof is not explicitly mentioned in the schedule and since “safety matches” comes under taxable and non taxable category it is up to the dealer to prove with sufficient documentary evidence that the item dealt by him comes under the non taxable category while claiming such exemption.

The point sought for is clarified accordingly.

Commissioner