

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. *V.K. Abdul Jabbar, Joint Commissioner (General), O/o. CCT, Tvpm.*
2. *T.V. Kamala Bai, Joint Commissioner (Law), O/o. CCT, Tvpm.*
3. *S.K. Suchala Kumar, Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.*

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Rate of tax on Machinery spares scrap, Aircraft spares scrap, Aluminium scrap, Electronics scrap, Diesel engine driven generator scrap and petrol engine trolley scrap - Orders issued.

Read :- Application from Sri. S. Kabir, M/s. Sithara Traders, Kochi dtd. 7/7/2009.

ORDER No.C3/30355/09/CT DATED 27/3/2012.

1. Sri. S. Kabir, M/s. Sithara Traders, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax on Machinery spares scrap, Aircraft spares scrap, Aluminium scrap, Electronics scrap, Diesel engine driven generator scrap and Petrol engine driven trolley scrap.

2. The applicant is a VAT dealer in scrap items. Old and obsolete machinery and spares are purchased in auction through MSTC Ltd., Naval Base, Kochi and other agencies.

3. The applicant contends that from the very nature, machinery spares scrap, aircraft spares scrap and aluminium scrap are in scrap form. It has been judiciously settled that any discarded machinery, spare parts, accessories etc., are scrap as decided by the Hon'ble High Court in 1971 (28) STC 455. Even going by the Rules of Interpretation any obsolete machines / scrap would assume the character of scrap. The applicant contends that entry 43(4) of the Third Schedule is Ferrous Waste and Scrap, sub entry (35) is Copper Scrap, sub entry (40) is Nickel Scrap, sub entry (65) is Cobalt scrap etc. The applicant contends that the Third Schedule covers almost all articles and utensils of various metals like iron, steel, copper, brass etc. Further, various machinery and parts fall under Entry 83 of the Third Schedule. Therefore, by any legal perspective, machinery spares scrap, aircraft spares scrap and aluminium scrap will fall under the Third Schedule and is exigible to tax at 4%.

4. The applicant further contends that electronics scrap items i.e. scrapped computers and accessories, are taxable at 4%. They are plastic / copper / aluminium items related to scrapped electronic goods. These items are taxable under Entry 43(4), (35), (43) or Entry 99 of the Third Schedule.

5. The applicant would also contend that Diesel engine driven generator scrap is taxable at 4% as all generators fall under Entry 38A of the Third Schedule. With respect to petrol engine driven trolley scrap also, it partakes scrapped ferrous materials falling under the Third Schedule.

6. The applicant has requested to clarify the rate of tax of the following items:

- i. Machinery spares scrap
- ii. Aircraft spares scrap
- iii. Aluminium scrap
- iv. Electronics scrap
- v. Diesel engine driven generator scrap
- vi. Petrol engine driven trolley scrap.

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

8. The term 'machinery spares scrap' have a wide meaning. Machinery spares scraps might be made up of metallic or non - metallic substances. It consists of scraps falling under different categories which are not segregated. As the term machinery spares scrap cannot be narrowed down to certain metals, the sub entries of Entry 43 of the Third Schedule to the Act cannot be said to be exclusively applicable to machinery spares scrap. The Department had issued a clarification vide order No. C3/14498/11/CT dtd. 14/9/2011 regarding the rate of tax on scrapped buses and the issues that were discussed therein is relevant in this case also. There is no specific entry for the commodity machinery spares scraps in any of the Schedules to the Kerala Value Added Tax Act, 2003. As such, it is clarified that machinery spares scrap would be taxable at 12.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

9. **Aircraft spares scrap** consists of different items such as the aluminum compound alnicko used for the making of the body, plastic, wood etc. It is a composite scrap consisting of scraps falling under different categories which are not segregated. There is no specific entry for the commodity aircraft spares scrap in any of the Schedules to the Kerala Value Added Tax Act, 2003. Hence, aircraft spares scrap would be taxable at 12.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

10. Entry 43(43) of the Third Schedule to the Kerala Value Added Tax Act, 2003 reads:

43 *Ferrous and non-ferrous metals and alloys; non ferrous metals such as aluminium, copper, zinc and extrusions of those*

(43) *Aluminium waste and scrap*

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11. Hence aluminium scrap would be taxable at 4% vide Entry 43(43) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

12. There is no specific entry in the Third Schedule to the Act with respect to electronics scrap. Electronics scrap consists of metallic wires, plastic insulations and different metallic joints made up of Germanium, Silicon etc. It is a composite scrap consisting of scraps falling under different categories which are not segregated. As such, electronics scrap would be taxable at 12.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

13. Nowadays engines are not manufactured using a particular metal exclusively. They are manufactured using different alloys or combination of metals for a host of reasons like reducing the weight etc. Diesel engine driven generator scrap and petrol engine driven trolley scrap are composite scraps consisting of scraps falling under different categories which are not segregated. No entry in any of the Schedules to the Kerala Value Added Tax Act, 2003 is suitable for incorporating the said commodities. As such, it is clarified that the commodities, diesel engine driven generator scrap and petrol engine driven trolley scrap would be taxable at 12.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

V.K. Abdul Jabbar
Joint Commissioner (General)
O/o CCT

T.V. Kamala Bai
Joint Commissioner (Law)
O/o CCT

S.K. Suchala Kumar
Joint Commissioner (A&I)
O/o CCT

To,

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