

**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.K. Zivudeen.  
*Joint Commissioner (Law),  
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. Dr. A. Bijikumari Amma.  
*Joint Commissioner (A & I),  
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. N. Thulaseedharan Pillai.  
*Joint Commissioner (General),  
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub :- KVAT Act, 2003 – Clarification U/s 94 – whether recording of audio cassettes on duplicating music system amounts to manufacture - Orders issued.

Read:- Application dtd. 09-08-16 from M/s. Christian Revival Fellowship Trust, Ernakulam

**ORDER No.CT/3177/16-C3 DATED 12/04/2017**

1. M/s. Christian Revival Fellowship Trust, Ernakulam has preferred an application U/s. 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether recording of audio cassettes on duplicating music system amounts to manufacture.

2. The applicant is a charitable institution registered u/s. 12A of the Income Tax Act and is also a presumptive dealer. The applicant submits that they deal in items such as music discs, CDROM, CDRS, Pre-recorded and Compact Discs and printed books.

3. The applicant has requested to clarify whether the sale of pre-recorded compact discs (after purchasing blank audio cassette and recording) covered under the category of “dealer effecting first taxable sales of goods within the state” and recording of audio cassettes on duplicating music system amounts to manufacture.

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

5. The issue sought to be clarified is squarely covered by the decision of the Hon’ble Supreme Court of India in the case of **Commissioner of Income Tax-V, New Delhi vs. M/s. Oracle Software India Ltd.** In the said case, the Hon’ble Supreme Court analyzed the facts presented before it in the context of computer technology and held that complex technical nuances were required to be kept in mind while deciding the issue on hand. The term “manufacture” implied a change, but, every change was not a manufacture, despite the fact that every change in an article was the result of a treatment of labour and manipulation. If an operation/process rendered a commodity or article fit for use for which it was otherwise not fit, the operation/process fell within the meaning of the word “manufacture”.

6. The Hon'ble Supreme Court held that the blank CD was an input. By the duplicating process undertaken by the assessee, the recordable media which was unfit for any specific use got converted into the programme which was embedded in the Master Media and, thus, blank CD got converted into recorded CD by the afore-stated intricate process. The duplicating process changed the basic character of a blank CD, dedicating it to a specific use. Without such processing, blank CDs would be unfit for their intended purpose. Therefore, processing of blank CDs, dedicating them to a specific use, constituted a "manufacture" in terms of sec. 80IA(12)(b) read with sec. 33B of the Income Tax Act.

7. The Hon'ble Supreme Court quoted with approval the decision of the same court in **TCS vs. State of Andhra Pradesh**, wherein it was held that a software programme put in media for transferring or marketing was "goods" under sec. 2(h) of the Andhra Pradesh General Sales Tax Act, 1957. The Hon'ble Supreme Court in that case, held that even an intellectual property, once put on to a media, whether be it in the form of a computer disc or cassette and marketed, it became goods. It was further held that there was no difference between a sale of a software programme on a CD/floppy from a sale of music on a cassette/CD.

8. The Hon'ble Supreme Court also quoted with approval the decision of the same court in **Gramophone Co. Of India Ltd. Vs. Collector of Customs, Calcutta**, wherein it was held that an input/raw material in the above process was a blank audio cassette. It was further held that recording of an audio cassette on duplicating music system amounted to "manufacture" because blank audio cassette was distinct and different from pre-recorded audio cassette and the two had different uses and names.

9. In the light of the above, it is hereby clarified that sale of pre-recorded compact discs are covered under the category of "dealer effecting first taxable sale of goods within the State" for the purpose of sec. 6(5). It is also clarified that recording of audio cassettes on duplicating music system amounts to "manufacture".

The issues raised above are clarified accordingly.

**T.K. Ziaudeen**  
Joint Commissioner (Law)  
O/o CCT

**Dr. A. Bijikumari Amma**  
Joint Commissioner (A&I)  
O/o CCT

**N. Thulaseedharan Pillai**  
Joint Commissioner (General)  
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To

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