

31. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM

Present: Sri. P.Mara Pandiyan I.A.S

Sub: KVAT Act 2003- Clarification U/s 94- Rate of tax-Iron Oxide –Clarified order issued - reg

Read: Application put in by M/s Feather touch Oxides Pvt.Ltd.,Eranakulam,. Dtd.18.07.2007.

ORDER NO C 3 - 30647/2007/CT Dtd. 21.10.2008

(1) M/s Feather Touch Oxides Pvt. Ltd. Ammankovil Cross , Eranakulam has preferred an application under section 94 of the KVAT Act 03 seeking clarification on the rate of tax applicable to Iron Oxide Red, Yellow and Black ,which are used as such as an inorganic pigment for coloring, including coloring cement floors, rubber products under the brand name “Feather Touch”.

(2) The applicant was heard in person by my predecessor in office, the contentions raised were examined in detail with reference to the statutory provisions. The point to be examined is whether the product dealt by applicant is to be classified under HSN 2821.10.10 and 2821.10.20 taxable @ 4% or under HSN 3206.

(3) As per Customs Tariff Act 1975, in chapter 28 , the description for HSN 2821 is read as “Iron Oxides And Hydroxides; Earth Colours Containing 70% Or More By Weight Of Combined Iron Evaluated As Fe₂O₃”. Chapter 28 applies only to “Products Of The Chemical Or Allied Industries” , even if an anti dusting agent or coloring matter is added to the above chemicals to facilitate their identification or for safety. Provided the addition do not render the product particularly suitable for specific use rather than general use. So it is clear that, the HSN 2821.10.10.and 2821.10.20 coming under chapter 28 of The Customs Tariff Act deals with Iron oxide as a well defined chemical only and none other.

(4) As per Customs Tariff Act 1975, in chapter 32 the description for HSN 3206 is read as “Other Colouring Matter; Preparations As Specified In Note 3 To This Chapter, Other Than Those Of Headings 3203, 3204 Or 3205; Inorganic Products Of A Kind Used As Luminophores, Whether Or Not Chemically Defined”. Note 3 read as “*Headings 3203, 3204, 3205 and 3206 apply also to preparations based on colouring matter (including, in the case of*

heading 3206, colouring pigments of heading 2530 or Chapter 28, metal flakes and metal powders), of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations. The headings do not apply, however, to pigments dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints, including enamels (heading 3212), or to other preparations of heading 3207, 3208, 3209, 3210, 3212, 3213 or 3215.”

(5) Chapter 32 Of Customs Tariff Act excludes chemically defined elements or compounds. HSN 3206 apply to preparation based on coloring matter. In relation to products of HSN 3206 , labeling or re labeling of containers and re packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to consumer shall amount to manufacture.

(6) According to the petitioner, the product is used in the manufacture of mosaic tiles paints, and pigments etc. Since a manufacturing process is inferred, going by the notes in chapter 28 and 32 as the Central Tariff Act, it cannot be classified under HSN 2821.10.10 and 2821.10.20 taxable @ 4%.

(7) In view of points discussed above, the product Iron Oxide Red, Yellow, and Black sold by the applicant under the brand name ‘Feather Touch’ will rightly fall under 12.5% category by virtue of entry 103 of SRO 82/2006.

The point raised is clarified accordingly.

Commissioner.