

**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. Ziavudeen.
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 – Rate of tax of fryums – Orders issued.

Read:- 1. Application dtd. 29/10/13 from Sri.V.V.Faizal, M/s. Hiba Traders, Feroke.

2. This Office Order No. C3/32376/13/CT dtd. 13/11/14.

3. Judgment of Hon'ble High Court in OT. Appeal No. 2 of 2015 dtd. 17/11/2015.

ORDER No.C3/32376/13/CT DATED 02/12/2016.

1) Sri. V.V.Faizal, M/s. Hiba Traders, Feroke had preferred an application u/s.94 of the KVAT Act, 2003 seeking clarification on the rate of tax of gole pappad (fryums).

2) The applicant would contend that Entry 36 of the First Schedule covers all pappads whether it is manufactured out of pulses, rice, wheat etc. The applicant, placing reliance on the Order No. C3/49774/06/CT dtd. 20/01/2007 wherein it was clarified that *Applam is nothing but Pappad which is enlisted as serial No. 36 of 1st schedule to KVAT Act 2003, and so is a non-taxable commodity* and would contend that the same interpretation is applicable in the instant case also.

3) The applicant had also relied on the decision of the Hon'ble Supreme Court in Shiv Shakti Gol Finger Vs. Asst. Commissioner, Commercial Taxes, Jaipur to support his contentions. The request of the petitioner was to clarify the rate of tax of the commodity fryums.

4) The Authority for Clarification vide 2nd paper read above clarified as follows:

“ Entry 36 of the First Schedule to the Act viz. Pappad does not have any HSN Code. As such, according to the Rules of Interpretation, common parlance or trade parlance test has to be adopted.

Fryums is a snack made from dough with added colour and are in different shapes like mini-checks, buttons, short tubes, stars, mini wheels and ‘O’ rings. It has to be fried in oil before using.

Pappads on the other hand, in trade parlance are thin flat and disc shaped food items based on dough made of mainly black gram flour and other flours. It is fried or cooked in dry heat. ‘Appalam’ is the Tamil word for ‘Pappad’.

So, in trade, ‘fryums’ and pappads are distinct, and the consumer also does not use the words interchangeably.

As such, it can safely be concluded that fryums would not fall within the scope of Entry 36 of the First Schedule and hence, can aptly be classified under Entry 49(2) of the Third Schedule to the Kerala Value Added Tax Act, 2003, taxable at the rate of 5%.”

5) Aggrieved by this order, another dealer M/s. Chakkiath Brothers, Ernakulam approached the Hon’ble High Court of Kerala. The Hon’ble High Court vide its judgment read 3rd paper above had observed that

“We dissuade ourselves from further stating anything on this point, because the impugned clarification order was issued evidently without taking recourse to sub-section 1(A) of Section 94 where the manufacturer of the goods dealt with in the impugned order does not appear to have been heard, nor was any first seller other than the dealer which itself had sought for the clarification. We do not see from that order as to whether the manufacturer was from within the State of Kerala.

The practical issue that arises from the dealer’s point of view is that if there are no clear cut clarifications as to the types of goods which could get classified as ‘pappads’ and types of goods which could get classified as otherwise than ‘pappads’ including what is attempted to be stated at the Bar as ‘fryums’; such a situation could lead to different anomalies in the assessment proceedings and penalty proceedings. Under such circumstances, we are of the view that the impugned clarification order has to be re-visited by the appropriate authority under section 94 and for such purpose, the said clarification is hereby vacated, paving way to the competent authority taking up the matter de novo and issuing notice to such dealers, including the dealer at whose instance that clarification order was issued, as also the dealer who is the

appellant in this O.T.Appeal and any other dealer or manufacturer of goods as may be found necessary.”

6) In view of the above facts, M/s. Hiba Traders (applicant), M/s. Venkitaramana Food Specialities Ltd., Puthucherry (the manufacturer from whom the applicant purchase the impugned commodity) and M/s. Chakkiath Brothers (appellant) had been informed to attend the hearing which was posted on 22/06/16. But, the authorized representative of M/s. Chakkiath Brothers requested that the hearing may be re-scheduled to another date and also submitted the names of major manufacturers of pappad/fryums (M/s. Venila Foods, Madurai & M/s. Noble Agro Food Products Pvt. Ltd., Ahmedabad) whose products are sold within the State and requested to hear them also. Considering the request, the matter was again posted for hearing on 20/07/2016. The authorized representative of M/s. Hiba Traders informed that they had filed all documents before the Commissioner at the time of issuing clarification and they had no additional documents to be produced. The authorized representative of M/s. Chakkiath Brothers appeared for hearing. But none of the manufactures turned up. Considering the judgment, the case was again posted for final hearing on 20/10/16. One of the manufacturers, Sri. K.Selvarajan, M/s. Venila Foods appeared and explained the manufacturing process. Considering the contentions raised by the applicant, appellant and the manufacturer and also upon the consideration of all relevant materials, the following conclusion is arrived.

7) The applicant has sought a clarification regarding the rate of tax applicable to the sale of gole pappad (Fryums). In support of his contention, the applicant has relied on the judgment of the Hon'ble Supreme Court in **M/s. Shiv Shakti Gol Finger vs. Assistant Commissioner, Commercial Taxes, Jaipur**. In the said case, the Hon'ble Supreme Court while interpreting the words 'Papad and Badi i.e. Mangori' used in a sales tax exemption notification, held that the notification did not intend to differentiate between gole or flat papad made of any ingredient. This judgment, however, is not applicable to the case on hand since the Hon'ble Supreme Court interpreted the word 'papad' in the context of the notification issued by the State of Rajasthan. In the said notification, the relevant entry covers the words "Papad and Badi", and the Hon'ble Supreme Court observed that the notification clearly mentioned that the word 'Papad' had been used as genus and its species were made from pulses, rice, maida, potato, sago, etc. However, in the case on hand, the Authority has been called upon to ascertain the tax rate, under the KVAT Act, in respect of the product dealt in by the applicant. And, for this purpose, 'papad' and fryums' have to be interpreted as understood in common parlance or popular sense.

8) M/s. Chakkiath Brothers, the appellant in OT.Appeal No. 2 of 2015 before the Hon'ble High Court of Kerala, has relied on the decision of the Hon'ble High Court of Karnataka in **State of Karnataka vs. Vasavamba Stores' [2013] 60 VST 19 (Karn)**, whereby, the Hon'ble High Court upheld the order of the Appellate Tribunal which held that "fryums" came within the purview of pappad under entry 40 of the First Schedule of the Karnataka Value Added Tax Act, 2003. The said decision, however, is not applicable to the present case since apart from extracting certain portions of the judgments delivered by **the Hon'ble Supreme Court in Shiv Shakthi Gol Finger and T.T.K.Health Care**, the Hon'ble High Court has not arrived at a separate finding based on a complete consideration of the issues, both fact-related and law-related, involved in that case. The Hon'ble High Court merely held that the judgment of the Shiv Shakti Gol Finger covered the issue on hand.

9) Now, 'pappad' is exempted from tax by virtue of Entry 36 of the First Schedule. However, this entry does not have HSN code. Hence, 'pappad' has to be interpreted in the same manner as is understood in common parlance or commercial parlance.

10) 'Pappad', as understood in common or commercial parlance is a thin wafer-like product, circular in shape, which is rolled from dough made out of black gram flour added with baking soda and salt. A well-kneaded mixture is then flattened into thin rounds and kept for sun drying.

11) On the other hand, 'fryums', as understood in common or commercial parlance is basically a cereal (flour and corn starch) based 'ready to fry' pellets. Wheat/sago flour, salt and baking powder are the main ingredients used in the preparation of fryums. Flour made from other sources such as rice, tapioca or potato can also be used.

12) A clear distinction between 'pappad' and 'fryums' can be established based on the following intelligible differentia –

- i. Pappad, as understood in common or commercial parlance, is a thin, flat, disc shaped wafer-like product. Fryums, on the other hand, are 'ready to fry' pellets or small flakes which come in various colours, and shapes such as mini checks, buttons, short tubes, stars, wheels, spoons or 'O' rings.

- ii. Pappad is known differently in different parts of the country. It is called 'pappadum' in Kerala; 'applam' in Tamil Nadu; 'happala' in Karnataka; 'papad khar' in Andhra Pradesh; and 'papri' in certain Northern States of the country. The commercially or commonly known 'fryums' is called 'vathal' in Kerala; 'vadam' or 'vathal' in Tamil Nadu; 'Sandiges' or 'Vadagams' in Karnataka; and 'Vadiyalu' in Andhra Pradesh.
- iii. In Kerala, pappad is invariably used as an accompaniment with the afternoon meals. It is crushed and mixed up with rice, dal and ghee. It is also used as an accompaniment with the traditional breakfast, viz., 'puttu'. Fryums, however, is a snack which is eaten as a pastime. In other words, it is a savoury.
- iv. Whereas pappad can either be fried, or cooked in dry heat; fryums are invariably fried in oil.
- v. Pappad has a shorter shelf-life than fryums.
- vi. In the retail market, 'pappads' are sold in packets, the MRP of which is determined on the basis of the number of pappads contained in each such packet, rather than the net weight of such packets. Fryums, however, are sold in packages, the MRP of which is determined only on the basis of the net weight of each such package.
- vii. If one goes to the shop to buy pappad, the shop keeper will never give him fryums. Similarly, if one goes to the shop to buy fryums, the shopkeeper will never give him pappad. In other words, there is no confusion or doubt in the mind of either the consumer or the trader with respect to pappad and fryums being two distinct and clearly identifiable products.

13) Thus, it is a clear, from the above, that in the more popular or commercial sense, papad and fryums are two clearly distinguishable products, and one cannot be mistaken for the other. Though some people, including a small section of the dealer community, may use the two names loosely, the general view, prevalent among the consumers and a large section of the trade, is that papad and fryums are two distinct products. This distinction is based mainly on the popular notion regarding the physical characteristics and purpose of use. Hence, in the context of KVAT Act, entry 36 of the First Schedule ie., 'papad' will not include or subsume 'fryums'.

14) If that be so, then we would have to find out the entry under which 'fryums' will fall. Commercially speaking, fryums is an extruded savoury. Now, food extrusion is a form of extrusion used in food processing. It is a process by which a set of mixed ingredients are forced through an opening in a perforated plate or die with a design specific to the food, and is then cut

to a specified size by blades. Apart from the raw form, nowadays, in the market, fryums are also available in packaged, ready-to-eat form.

15) As per the Customs Tariff Act, 1975, papad has a specific HSN Code; viz., 1905.90.40. HSN Code 1905.90.30 of the said Act covers 'Extruded or expanded products, savoury or salted'. Under the KVAT Act, HSN code 1905 90 30 corresponds to Entry 49(2), which reads: 'savories like chips, popcorn, murukku, achappam, pakoda, mixture, chikky items, kuzhalappam and similar preparations'. Hence, fryums would fall under Entry 49(2) of the Third Schedule, attracting tax @5%.

The issues raised above are clarified accordingly.

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