

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, KERALA
THIRUVANANTHAPURAM

PRESENT : SUMAN BILLA, I.A.S.

Sub : KVAT Act, 2003 - Clarification U/s 94 - Rate of tax on Air bubble film rolls - Orders issued.

Read : Application from M/s. Cofab, Cochin dtd. 14/10/2011.

ORDER No. C3/34755/11/CT DATED 13/4/2012.

1. M/s. Cofab, Cochin, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax on the commodity Air bubble film rolls.

2. The applicant is a registered dealer borne on the rolls of Office of the Commercial Tax Officer, Second Circle, Tripunithura. The applicant deals in many commodities including Air bubble film rolls. The applicant contends that the HSN Code of the product is 3920.10.92 and also that the commodity finds a place in Entry No. 60 of the List A of the Third Schedule to the Kerala Value Added Tax Act, 2003 bearing HSN Code 3920.

3. The applicant would further contend the commodity shall come under the HSN code for the Item head in the Excise Tariff 3920, for which only the Schedules of the Kerala Value Added Tax Act contains an entry. As per the Rules of Interpretation of the Schedules, the commodities which are given four digit HSN number shall include all those commodities coming under that heading of the HSN.

4. The applicant would further contend that the product is used as a packing material in the trade and industry. The commodity is Air bubble film rolls, which is an essence in the rolls of polyethylene films. The product is manufactured from polyethylene granules. The applicant has requested to clarify the rate of tax of the commodity.

5. The authorised representative of the applicant was heard in the matter and the contentions raised were examined. Since the members of the Authority for Clarification could not arrive at a unanimous decision, the matter was referred to the Commissioner of Commercial Taxes as envisaged in the statute.

6. The Customs Tariff Act HSN 3920 reads:

3920 OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS, NON-CELLULAR AND NOT REINFORCED, LAMINATED, SUPPORTED OR SIMILARLY COMBINED WITH OTHER MATERIALS

3920 10 - Of polymers of ethylene:

--- Sheets of polyethylene:

3920 10 11 ---- Rigid, plain

3920 10 12 ---- Flexible, plain

3920 10 19 ---- Other

--- Other :

3920 10 91 ---- Rigid,

3920 10 92 ---- Flexible, plain

7. The applicant purchases Air bubble film rolls in bulk quantity and after applying labour would sell the commodity as an article for carrying or conveyance. Then it would be improper to consider it as mere poly ethylene film, as it is an item for packing.

8. The commodity Air bubble film roll dealt by the applicant is a packing material. The purchasers of the said product use it as packing material. The Hon'ble High Court of Kerala in *Trends Polymer Pvt. Ltd. Vs. Assistant Commissioner - III (2009) 17 KTR 266 (Ker)* has held that sale of polythene films used for packaging of milk is packing material. It was held that **'so long as the item sold is used for packing goods, it is packing materials, irrespective of the fact whether the petitioner has sold it in rolls or sheets and the purchaser in the course of packing in the automatic packing machine only made it into covers and packed the goods'**.

9. Hence the commodity Air bubble film roll dealt by the applicant can be safely classified as **articles for the conveyance or packing of goods** coming under the HSN Code 3923 and specifically under the HSN Code 3923.90.90 which reads:

3923 ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS

3923 10 - Boxes, cases, crates and similar articles:
3923 90 90 --- Other

10. In a similar instance, wherein the applicant thereto had requested to clarify the rate of tax of the commodity Air bubble film, the Commissioner of Commercial Taxes vide clarification Order No. C3/55266/06/CT dated 21.04.2008 held that **'Air bubble film is a packing material with the HSN 3923.90.90. Since this eight digit HSN does not figure in Schedule III it is taxable @ 12.5% vide entry 103 of SRO 82/06'**.

11. In view of the facts cited supra, it is clarified that the commodity Air bubble film rolls would be taxable at the rate of 12.5% by virtue of Entry 103 of S.R.O. No. 82/2006, as on the date of application.

The issues raised above are clarified accordingly.

COMMISSIONER

To,

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