

**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. *K.J. Valsala Kumari, 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 - Whether the sale of micro wave kit (for Rs.1/- supplied along with the main finished product 'micro wave oven') amounts to be sale under the KVAT Act (as the actual sale value of this micro wave kit is included in the value of the main finished product 'micro wave oven' but it is supplying as free along with this finished product) - Orders issued.

- Read :- 1. Application from M/s. Whirlpool of India Ltd., South Kalamassery dtd. 20/10/2011.
2. This Office notice of even No. dtd 22/11/2011.
  3. Letter from M/s Whirlpool of India Ltd., South Kalamassery dtd. 22/12/2011.
  4. This Office letter of even No. dtd. 22/2/2012 and 18/9/2012.

**ORDER No.C3/36243/11/CT DATED 19/10/2012.**

1. M/s. Whirlpool of India Ltd., South Kalamassery has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 vide 1<sup>st</sup> paper above, seeking clarification as to whether the sale of micro wave kit (for Rs.1/- supplied along with the main finished product 'micro wave oven') amounts to be sale under the KVAT Act (as the actual sale value of this micro wave kit is included in the value of the main finished product 'micro wave oven' but it is supplying as a gift along with this finished product).

2. The applicant, M/s. Whirlpool of India Ltd, is a Registered dealer having Corporate Office at Faridabad, Delhi and Branch Office at Kochi as principle place of business in the State of Kerala.

3. The applicant is purchasing micro wave Kits against C Form from the supplier whose place of business is outside Kerala. The said micro wave kits are given to dealers & customers along with the main finished product micro wave oven. Micro wave oven kit is a part of the main finished product micro wave oven. The applicant is billing the kit with the microwave oven one to one but charging Rs.1/- per one because the applicant's SAP system is not allowed for zero billing. Sometimes kits are not available in the stock, then the balance quantity will be given to the dealer when supply is received. The applicant is issuing C Forms

against such interstate purchase of microwave oven kit to be supplied along with the main finished product of micro wave oven.

4. The applicant has requested to clarify whether the sale of micro wave kit (for Rs.1/- supplied along with the main finished product 'micro wave oven') amounts to be sale under the KVAT Act (as the actual sale value of this micro wave kit is included in the value of the main finished product 'micro wave oven' but it is supplying as a gift along with this finished product)?

5. Sri. P.J. Johney, the authorised representative of the applicant was heard on 30/11/2011 in the subject matter. However, the applicant vide letter read as 3<sup>rd</sup> paper above has informed the following:

*As per the order of the Hon'ble High Court of Kerala in OTA No. 4/2011 dtd. 15/11/2011, the order of the Commissioner of Commercial Taxes No. C3/10790/11/CT dtd. 1/7/2011 uphold and appeal dismissed.*

*Further the Hon'ble High Court passed the following order:-*

*" Incidentally we make it clear that in the event the appellant filed any other application for clarification as to whether the free supply of articles along with sale of micro wave ovens attract tax under the KVAT Act, authority for clarification is bound to clarify the same. Therefore, if any such applications for clarification is filed by the appellant, the authority should pass orders there on without any delay.*

*2. Amendments in the clarifications sought:*

*In Form No. 24 application for clarification U/s 94 item No. 5 clarification sought may be read as follows instead of the existing item "Whether the sale of micro wave kit (for ` 1/- supplied along with the main finished product 'micro wave oven') amounts to be sale under KVAT Act (as the actual sale value of this micro wave kit is included in the value of the main finished product 'micro wave oven' but it is supplying as free along with this finished product)?"*

*3. Grounds of clarifications.*

*In the grounds of clarifications sought for may be read as follows instead of the existing one "Whether the sale of micro wave kit (for Rs.1/- supplied along with the main finished product 'micro wave oven') amounts to be sale under the KVAT Act (as the actual sale value of this micro wave kit is included in the value of the main finished product 'micro wave oven' but it is supplying as free along with this finished product)?"*

6. Subsequently, the authorised representative of the applicant was heard again on 29/2/2012 and 26/9/2012, and the contentions raised were examined.

7. The clarification sought for in the application dated 20/10/2011 is seen amended based on the judgment of the Hon'ble High Court of Kerala, as per which the clarification is for :-

*“as to whether the free supply of articles along with the sale of micro wave ovens attract tax under the KVAT Act”.*

8. In the judgment, the transfer of kit is depicted as free supply (free of cost) along with the supply of microwave ovens. Nothing is seen mentioned therein with regard to any contention that the value shown in the sale invoice of ovens is inclusive of the price of kit or that invoice for Rs.1/- is issued for the supply of a kit.

9. But in the application filed before this Office, the applicant depicts the transfer of kit as gift as well as sales. In the invoice produced before the authority for clarification also, this anomaly is noticed. The invoice is raised for a consideration of Rs.1/- demanding VAT also, but at the same time specifying the item as “gift”. The applicant is taking contradictory stands as to whether the supply is a ‘gift’ or is it pursuant to a sale.

10. No evidence is there in the invoices issued for ovens to show value is inclusive of the value of kits. In view of the above said facts, it is clarified that, if the supply is as free gift, then the applicant cannot raise invoice or purchase the items using C Forms which are against the provisions of the Act and punishable under the Act.

The issues raised above are clarified accordingly.

**K.J. Valsala Kumari**  
**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

Sri. P. J. Johney, FCA,  
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