37. PROCEEDINGS OF THE   COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM

Present:- Paul Antony.IAS

Sub:- KVAT Act 2003- Clarification U/s. 94- French Fries- orders-issued-Reg:

Read:- 1.Application dt. 20.04.07 of M/s. Agro Tech Foods Ltd, 31, Sarojini Devi Rd, Secunderabad.

ORDER No.C3.18164/07/DT .03.. 07.07

M/s. Agro Tech Foods Ltd, Secunderabad has preferred an application U/s. 94 of KVAT Act, seeking clarification on the rate of tax applicable to French Fries.

The applicant was given an opportunity of being heard. The authorised representative was heard and contentions raised were examined.

The contention of the applicant was that the product 'French Fries" would fall under entry 84(23((a) of schedule III to KVAT Act. This entry reads as 'Vegetable (uncooked or cooked by steaming or boiling in water) frozen- potatoes' with HSN code 0710.10.00. It is stated that the applicant is importing Lamb Western (LW) French Fries under Customs Tariff heading 2004.10.00. The entry 84(23)(a) relates to HSN 0710. only.

According to the applicant raw potatoes are subjected to a series of processes including frying and resultant product is the "French Fries' which is a preserved food product.

The contentions of the applicant have been examined with reference to the statutory provisions.

Entry 42(5) of SRO 82/06 refers specifically to "other nuts otherwise prepared or preserved coming under HSN 2008.19.30. Chapter 20 of Customs Tariff Act deals with "Preparations of vegetables fruits, nut or other parts of plants". So the product in question is classifiable under this chapter and similar products are notified under 12.5 % category under entry 42 of SRO 82/06 details supra.

Admittedly the HSN of the product is 2004.10.00. By classifying similar products under entry 42 of SRO 82/2006, the intention of Legislature is clear. But since the said HSN has not been specifically mentioned in the said entry or in any other entries of the schedules, it is classifiable under entry 103 of SRO 82/06, taxable @ 12.5%.

The point sought for is clarified accordingly.

Sd/-
Commissioner.