

44. PROCEEDINGS OF THE COMMISSIONER COMMERCIAL TAXES, THIRUVANANTHAPURAM

Present:- Sri.Paul Antony.IAS

Sub:- KVAT Act 2003- Clarification U/s.94- rate of tax- Banana Powder, Rice Banana and Ragi Powder- Orders issued- Reg:

Read:- Application dated 19-2-07 from Sri P.Usmankutty, Southern Food Products, Changavetty, Kottakkal, Malappuram

ORDER No.C3.11900/07/CT DT.31. 07..07

M/s. Southern Food Products, Changavetty, Kottakkal, Malappuram has preferred a clarification U/s. 94 of KVAT Act seeking clarification on the rate of tax of

- (i) Banana Powder,
- (ii) Rice Banana and
- (iii) Ragi Powder.

The authorized representative of the applicant was heard. It was contended that 'Banana Powder' is the powder form of raw banana and 'Rice Banana' is manufactured using raw banana , rice powder, sugar, cardamom and muthanga while 'Ragi powder' is manufactured using ragi, cardamom, muthanga etc and so are classifiable under entry 86 of 3rd schedule to KVAT Act, 2003 which reads as "mixture of cereals, pulses, spices in raw form roasted or powdered sold under brand name other than those registered under the Trade Marks Act, 1999..The contentions raised were examined in detail.

The Hon High Court of Kerala while disposing the OT Appeal No 10/2006 on 10th January had entered into a finding that 'Banana Powder' is classifiable under entry 84(25)(i) of 3rd schedule and taxable is taxable @ 4 %. So further clarification on the issue is unwarranted.

Going by the product profile of 'Rice banana' and 'Ragi powder', they are profiled as ' Baby vita- rice banana' and 'Baby vita-Ragi which are food supplements for babies, which contain Ragi/Banana Powder, Cardamom, muthanga and sugar etc.

In the case of a similar product, "Ragivita", which is a combination of Ragi, Red raw rice flour, cocoa and cardamom, the Hon'ble High Court in OT Appeal No 10 of 2006 dated 16-1-2007 had upheld the findings of Commissioner of Commercial Taxes with regard to rate of tax, and entered into conclusive finding that it would fall under the entry 103 of SRO 82/06 and would attract 12.5% tax rate.

In the case of "Ragivita" referred ibid, the Hon'ble High Court held that being not flour only, but a preparation of Ragi, red raw rice flour, cocoa and cardamom the commodity cannot fall under entry 86 of 3rd schedule, but is exigible to tax U/s.6(i)(d) read with the residual entry 103 of SRO 82/06.

Going by the product profile it is seen that in content, structure and use of 'Rice banana (Baby vita- rice banana)' and 'Ragi powder (Baby vita-ragi)' are almost on the same lines and so the tax formulation entered into by High Court in the case of "Ragivitta: is squarely applicable in the case of 'Rice banana (Baby vita- Rice banana)' and 'Ragi powder (Baby vita-Ragi)' also.

So the products 'Rice banana (Baby vita- Rice banana)' and 'Ragi powder (Baby vita-Ragi)' are classifiable under entry 103 of SRO 82/06 taxable @ 12.5%.

The issues raised are clarified accordingly.

Commissioner