

**5. PROCEEDINGS OF THE COMMISSIONER OF
COMMERCIAL TAXES, THIRUVANANTHAPURAM**

PRESENT: P. MARA PANDIYAN, I.A.S.

Sub:-KVAT Act 03- Clarification U/s. 94 – Rate of tax of goods covered by entry 7 of 3rd schedule of KVAT Act –03.

Read:- Application dt. 29.09.08, M/s. All Kerala Bakery Products Distributors Association.

ORDER No.C3.40405/08/CT Dt.08.01.09

(1) M/s. All Kerala Bakery Products Distributors Association has preferred an application U/s. 94 of the KVAT Act seeking clarification on the following point.

What will be the rate of tax of the goods covered by entry No. 7 to schedule III of the KVAT Act 03 and Sl. No. 11 (8) and 24(3) of RNR list as per SRO 82/06.

(2) The Authorised representative of the applicant was heard and contentions raised were examined.

(3) The members of the Association are engaged in dealings of biscuits and confectioneries which are not under brand name registered under the Trade mark Act 1999.

(4) Entry 7 to 3rd schedule of the KVAT Act is a part of the KVAT Act and no HSN code is assigned to the above entry and as such common parlance or trade Parlance test is to be adopted, while interpreting the said entry.

(5) SRO 82/06 is a notification issued by the Government in exercise of power delegated to Government by Sec. 6 (d) of the KVAT Act whereby the Government is empowered to notify goods taxable @ 12.5%, not falling within II and III schedule to the KVAT Act. In case of repugnancy between the schedules of the KVAT Act and SRO 82/06 the entries in the schedule will prevail.

(6) Hence by reasoning, “Biscuits other than those sold under brand name” registered under the Trade Marks Act, 1999 would fall under entry 7 of the third schedule, taxable @ 4 %.

Commissioner