

**55. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPURAM**

Present:- Paul Antony. IAS

Sub:- KVAT Act 05- Clarification U/s. 94-Application filed by M/s. J.N.B Marketing (India) (Pvt) Ltd. Cochin- clarified orders issued- Reg:

Read:- 1. Application in form no. 24. Dt.21.10.05
2.Hearing Notice No.C7.51851/05/CTDt.02.05.06

ORDER No.C7.51851/05/CT Dt. 31.05.06

M/s. JNB Marketing (Ind) Pvt.Ltd. Cochin has filed an application U/s. 94 of KVAT Act 03 on the following.

1. Whether free replacement of goods within 3 months attract reverse tax or VAT under KVAT Act as per section 41(1) read with Rule 59.
2. Clarify the rate of tax of the following commodities under VAT.
 1. Oil dispenser made of plastic for use in Kitchen
 2. Oil dispenser made of stainless steel for use in Kitchen
 3. Cutlery sets- made of stainless steel
- 3.Non stick cookware spare parts; viz
 - a. Bakelite Handles/Knobs
 - b. Stainless steel lids
 - c. Wooden spatula
 - d. Iron Screws
4. Cook`n` serve ware spare parts; viz
 - a. Bakelite Handles/knobs
 - b. Glass lids
 - c. Iron enamelled lids
 - d. Iron screws
5. Melamine ware
(Plates, Bowls, cups, saucers etc)
6. Rubber tubings for LPG stove
7. Aluminium Rice cooker- used for cooking Rice.

Sri.P.U.Jose, Managing Director, JNB Marketing (India) Pvt. Ltd. was heard. The contention of the applicant is that since no sales consideration is involved in the free replacement, which is in connection with the sale of goods already made, realizing price on which output tax is collected, the question of reverse tax on the value of the replaced goods will also not arise.

The contentions of the applicant have been examined in detail. The credit note and debit note specified in section 41 of KVAT Act relates to purchase and sales return by dealers Replacement of defective goods will not come under the purview of the said section.

Hon'ble Supreme Court in Mohammed Ekran Khan & Sons Vs. Commissioner of Trade Tax, UP reported in (2004) 136 STC 515, has held that when spare parts are issued by the dealer for repairs of defect of motor vehicles sold by it on behalf of the manufacturer and recoument of the cost of such spare parts from the manufacturer by way of credit notes, it is nothing but sale exigible to tax (VAT)

The applicant further requested to clarify the rate of tax applicable to certain items under VAT. The rates of tax of the items are as follows:

Sl.No	Name of Commodity	Sche.No.	Entry No	HSN Code	Rate of tax
1	Oil dispenser made of plastic for use in Kitchen	3	137 (12)	3924.10	4%
2	Oil dispenser made of stainless steel for use in Kitchen	3	137 (8)	7323.93.90	4 %
3	Cutlery sets- made of stainless steel	3	3(32)	8215	4%
4	Non stick cookware spare parts; viz Bakelite Handles/Knobs Stainless steel lids Wooden spatulas Iron Screws and parts there of	3	137(11)	7615.19.20	4%
5	Cook"N" serve ware spare parts; viz Bakelite Handes/Knobs Glass lids Iron enamelled lids Iron Screws	RNR	RNR		12.5%
6	Melamine ware (Plates, Bowls, cups, soucers etc)	RNR	RNR		12.5%
7	Rubber Tubings for LPG Stove	RNR	Sl.No.46 of SRO.82/06	7321	12.5%
8	Aluminium Rice cooker- used for cooking Rice.	RNR	RNR		12.5%

The point sought for is clarified as above.

Sd/
Commissioner