

57. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPURAM

Present:- Paul Antony. IAS

Sub:- KVAT Act 03- Application for rectification U/s. 66-Orders issued-
Reg:

Read:- 1. This office order No.C7.40304/06/CT Dt. 11.07.07

2. Petition for rectification u/s 66 filed by M/s. Herbal Isolates (P)
Ltd, Ekm

ORDER No.C7.40304/06/CT Dt..06..10..07

As per order read as 1st paper above the rate of tax on 'spent mustard waste' was clarified as coming under entry 93(7) of 3rd schedule to the Act and would be taxable at 4%. Subsequently the applicant as per reference read as 2nd above had filed a petition seeking rectification of the said order U/s. 66 of KVAT Act 03 for reasons that certain contentions raised which are detailed ibid were not considered for entering into the findings in the said order.

The Authorized Representative of the applicant was heard. The contention raised by the applicant is that the product "spent mustard waste" would come under entry 3(4) of the 1st schedule under "HSN 2308.00.00" which reads as "Vegetable materials and vegetable waste, vegetable residue and by products, whether or not in the form of pellets of a kind used in animal feeding not elsewhere specified or included" and that this contention was not seen considered and a findings as to the admissibility or otherwise of the said contention was not seen entered into in the said clarification order.

The contentions of the applicant were examined in detail. Here, in the process of manufacture of the commodity in question the original input is "mustard " which has got a specific entry under serial number 94 of the 3rd schedule under the head 'oil seeds'. The term vegetable is a culinary term that generally refers to an edible part of a plant, which is somewhat subjective. All parts of herbaceous plants eaten as food by humans are normally considered as vegetables. Nuts, grains, spices and culinary fruits are normally not considered as vegetables. So mustard under no stretch of interpretation can be classified as a vegetable especially since it is specifically brought under oil seeds for the purpose of KVAT Act. So the contention that the commodity would come under entry 3(4) of First schedule which relates only to vegetable materials, vegetable waste, vegetable residue etc lacks merit and so the contention to that effect is liable to be rejected.

The applicant has filed a four tier processing activity by which the product in question is evolved. The applicant has no case that the same is evolved out of solvent extraction but admittedly is obtained through spinning cone column distillation.

The question raised can be clarified only with reference to the statute. As per the order read as 1st paper above, a finding was entered into to the effect that the activities through which the product in question is evolved would not amount to 'solvent extraction' and only if it is "solvent extracted" this can be considered for classification under 1st schedule in view of the findings that this would not come under the entry 3(4) of 1st schedule, in view of the findings that this would not come under the entry 3(4) of 1st Schedule.

So for the reasons detailed *ibid* read with the findings entered into as per order read as 1st paper, there is no reason for considering any deviation from the findings already entered into.

The rectification application therefore lacks merits and so is declined.

Commissioner