

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

**PRESENT : M.GIREES KUMAR, I.A.S.**

Sub : KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of Scented arecanut - Orders issued.

Read : 1. Order No. C3/27520/08/CT dtd. 30/11/2012 of the Authority for Clarification U/s 94 of the Kerala Value Added Tax Act, 2003.  
2. Judgment of the Hon'ble High Court of Kerala in OTA Nos. 2& 4 of 2013 & WP(C) No. 6055 of 2013 dtd. 3/9/2013.  
3. Letter from Adv. S. Anil Kumar dtd. 18/1/2014.  
4. This Office letters of even No. dtd. 6/2/2014.  
5. Application from M/s. Soumya Agencies, Kollam dtd. 14/2/2014.  
6. This Office Notice of even No. dtd. 1/3/2014.  
7. This Office Notice of even No. dtd. 11/8/2014.  
8. Adjournment request from M/s Azam Laminators (P) Ltd., dtd. 18/8/2014.  
9. This Office Notice of even No. dtd. 29/8/2014.

**ORDER No.C3/7632/13/CT DATED 3/3/2015.**

**1. History of the Case.**

- (a) As per the clarification Orders C3-25772/07/CT dated 14/1/2008 and Order No.C3-53291/06/CT dated 23/7/2007, it was clarified that powdered / ground (betel) arecanut added with small quantities of edible oil or sugar, glucose, saccharine, menthol, flavor etc. would fall under HSN Code 2106.90.30 of the Customs Tariff Act. Consequently, since this HSN code was not found in any of the Schedules to the Kerala Value Added Tax Act, 2003, it was clarified to be taxable at 12.5% by virtue of Entry 75(2) of S.R.O.No.82/2006.
- (b) The above said clarifications were re-examined by the Authority for Clarification as directed by the Hon'ble High Court of Kerala in Order No.OTA No.7/2008 and WP(C) No. 25215 of 2007(B) dated 1<sup>st</sup> day of June, 2008, vide clarification Order No.C3/27520/08/CT dated 30/11/2012. Adverting to the judgment of the Hon'ble Supreme Court in **M/s. Reckitt Benckiser (India) Ltd. Vs. Commissioner of Commercial Taxes, Kerala [2008 (2) KLT 604 – SC]** and **M/s. Crane Betel Nut Powder Works reported in [(2007) 4 SCC 155; 2007 (210) E.L.T 171 (SC)]**, it was clarified that the HSN Code applicable to the product was 0802.90 and not 2106.90.30.
- (c) With regard to the further grouping of this commodity in the eight digit HSN code, the Authority, found that the commodity scented betel nut / arecanut sold by M/s. Azam Laminators (P) Limited, Pudukkottai is not powder or fine particles but sufficiently larger pieces which could be classified as split portions of arecanut. They have also relied on the order of Central Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Commissioner of Central Excise and Customs, Guntur Vs. Crane Betel Nut Powder

Works 2008(221) ELT 99 (Tri-Bang) to arrive at the conclusion that, the same would be classifiable under HSN Code 0802.90.12. Since, this HSN Code does not find any place in the Schedules to the Kerala Value Added Tax Act, 2003 the item was classified under Entry 103 of S.R.O. No.82/2006 taxable at 13.5%.

2. Aggrieved by the above said order M/s. N.V.K Muhammed Sulthan Rawther & Sons filed OTA 2/2013, Sri. A.R. Safiullah, Managing Director, M/s. Azam Laminators (P) Ltd., Pudukkottai filed OTA 4/2013, and Sri. A.R. Safiullah, Proprietor, M/s. S.A. Safiullah & Co., Pudukkotai filed WP (C) No. 6055/2013(F) before the Hon'ble High Court of Kerala. Hon'ble Court vide the common judgment read as paper 2<sup>nd</sup> above set aside the clarification order as it found that no proper opportunity of hearing was granted and had directed the parties therein to mark appearance in the Office of the competent Authority for Clarification at 10.30AM on 18/1/2014. The Court also directed that ***'the authority will then proceed to take further steps for appropriate compliance of the requirements under Section 94 of the KVAT Act and decide on the issue after hearing the necessary parties and advertng to all necessary issues, including the relevant aspect of the products and such other questions as may be necessary for just and complete decision at that time'***. So the matter was required to be decided afresh.

3. Adv. S. Anil Kumar, the authorized representative of Sri. A.R. Safiullah, Managing Director, M/s. Azam Laminators (P) Ltd., Pudukkottai appeared and produced a copy of the judgment on 18/1/2014 vide letter read as paper 3<sup>rd</sup> above.

4. Since some of the appellants failed to comply with the direction of the Hon'ble Court, a letter was issued to them vide letters read as paper 4<sup>th</sup> above, wherein it was informed that ***'you have not complied with the direction contained in the judgment. However, in view of the direction of the Hon'ble High Court that the requirements of Section 94 of the Kerala Value Added Tax Act are to be complied with, you are requested to submit an application for clarification U/s 94 of the Act read with Rule 78 of the Rules made there under within 7 days from the date of receipt of this letter, failing which the Authority would be constrained to finalize the proceedings in your absence'***.

5. Accordingly, M/s. Soumya Agencies, Kollam filed an application U/s 94 of the Act vide paper 5<sup>th</sup> above.

6. Subsequently, as directed by the Hon'ble Court all necessary parties were heard by the Authority for Clarification U/s 94 of the Act on 12/3/2014. They had also produced the sample products. While two of the members of the Authority for Clarification were of the opinion that the product would be classifiable under HSN Code 0802.90.12 and is taxable at the rate of 13.5%, one member expressed the opinion that since the meaning of ground and powder are one and the same, the product would be classifiable under HSN code 0802.90.13, taxable at 5%. The Authority could not arrive at a unanimous decision and the matter was referred to the Commissioner as envisaged in sub-section (6) of Section 94 of the Act.

7. Accordingly, the matter was placed before me. The parties/authorized representatives, Senior Counsels Smt. Nalini Chidambaram, Sri. V.V. Asokan, Sri S. Anil Kumar were again heard in detail on 12/9/2014 and the contentions raised in the matter have been examined.

8. I agree with the finding of this Authority for Clarification and the earlier Authority that the decision in the Crane Betel Nut case (**M/s. Crane Betel Nut Powder Works reported in [(2007) 4 SCC 155; 2007 (210) E.L.T 171 (SC)]**) is applicable to this product and this product would fall under Chapter 8 of the Customs Tariff Act with the six digit HSN code 0802.90.

9. Then, the only question to be decided by me is whether this product would fall under the HSN Code 0802.90.12 or 0802.90.13. The Authority for Clarification, among other factors, had relied on order of Central Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in **Commissioner of Central Excise and Customs, Guntur vs. Crane Betel Nut Powder Works 2008(221) ELT 99 (Tri-Bang)**.

In this regard, the finding of the earlier Authority is reproduced below:

In paras 14 and 15:

*"14. Subsequently, in Commissioner Vs. Crane Betel Nuts Powder Works - 2008 [221] ELT 1999 Tribunal, Bangalore, The Central Excise Tribunal held citing the Supreme Court case Crushing of Betel Nut into smaller pieces, sweetened with sweetening agents, essential / non- essential oils and menthol and is classifiable under Tariff item 0802.90.12 of Central Excise Tariff Act. It was also held that, the introduction of 8 digit HSN classification in Central Excise Tariff does not have any consequences or bearing on the case and upheld the order of the Commissioner (Appeals). It was held that Supreme Court decision is clear on the aspect that, in para 17 of the said judgment, after detailed consideration of the submissions made therein has held that the end product "betel nut remains a betel nut" and there is no change in the end product.*

*15. Hence, as far as Central Excise Tariff is concerned, the product belongs to HSN code 0802.90.12. The four digit HSN 0802 and Entries under it in Chapter 8 of Central Excise Tariff Act, exactly corresponds to the four digit HSN 0802 and Entries under it in Chapter 8 of Customs Tariff Act. The notes to the Chapters are also the same."*

And, subsequently in para 17,

*"17. The CESTAT tribunal, in decisions cited supra while deciding whether the adoption of eight digit classification in Central Excise Tariff has made any difference in the ratio pronounced by Hon'ble Supreme Court Judgment in 'crane betel nut powder case' found the issue in the negative. In that case, the Tribunal upheld the classification made by the lower authority i.e., HSN 0802.90.12..... Split."*

To this, the applicants have contended that the decision of the CESTAT in **Commissioner of Excise & Customs, Guntur Vs. Crane Betel Nut Powder Works [2008 (221) E.L.T. 99 (Tri. Bang.)** does not change the position of law laid down by the Apex Court. In the said case what was held was that the product of M/s. Crane Betel Nut Powder Works fall under Tariff Entry 08029012, in that case the claim of the respondent relates to arecanut pieces and not in respect of arecanut powder or ground arecanut. I have examined the Judgment. The judgment is not conclusive, in deciding the facts in issue, i.e., whether the product is split or ground or in powder form.

10. I have examined the entries in the Customs Tariff Act and the Third Schedule to the Kerala Value Added Tax Act, 2003. The relevant entries in Chapter 8 of Customs Tariff Act are:

<b>0802</b>	<b>OTHER NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLLED OR PEELED</b>
	- Almonds:
0802 11 00	-- In shell
0802 12 00	-- Shelled
	- Hazelnuts or filberts (Corylus spp.):

0802 21 00	-- In shell
0802 22 00	-- Shelled
	- Walnuts:
0802 31 00	-- In shell
0802 32 00	-- Shelled
0802 40 00	- Chestnuts ( <i>Castanea spp.</i> )
0802 50 00	- Pistachios
0802 60 00	- Macadamia nuts
0802 90	- Other:
	--- Betel nuts:
0802 90 11	---- Whole
0802 90 12	---- Split
0802 90 13	---- Ground
0802 90 19	---- Other
0802 90 90	--- Other

The relevant entries in the Third Schedule to the Kerala Value Added Tax Act, 2003 are as under:

**2        Arecanut powder and arecanut**

(1) Arecanut powder	0802.90.13
(2) Arecanut	0802.90.11

Hence, it can be seen that while the description in the Customs Tariff Act for HSN Code 0802.90.13 is 'Ground', the description of the same HSN Code in the Kerala Value Added Tax Act, 2003 is 'Arecanut powder'. By virtue of the Rules of Interpretation appended to the Schedules to the Kerala Value Added Tax Act, those commodities with HSN number should be given the same meaning as given in Customs Tariff Act, 1975. Hence, I am inclined to proceed to examine the commodity in the light of the word used in Customs Tariff Act, i.e., 'Ground'.

11. Basically the issue to be decided boils down to the size of the product. According to the petitioners, there is no arecanut powder like talcum powder available in the market. Also, there is no commercial value for fine arecanut powder, if any manufactured. The product usually sold is one of ground form, which is produced through the process of grinding using particular machines. By arranging the width of the jaw size of the machine, arecanut in grounded form of different sizes can be made.

The raw material for making the impugned product is arecanut, split into two. They have also produced samples of the same.

They have also produced copies of their Shipping Bill for Export, Tuticorin Port relating to **'Nizam Betel Nut – 500 bags of 40 packets and each packet containing 50,00,000 pouches'** and has classified this item under HSN Code 0802.90.13. This has been accepted by the Customs Authorities.

The sample of the impugned commodity was produced by the applicant; they have also produced the commodity in retail packets which are commonly sold in the market. On visual examination, the arecanut pieces are found to be in granular form like 3 to 5 mm sand particles with little bit of powder residue, and definitely not in uniform fine particles. This size also cannot be called 'split', which, as understood in general parlance means a whole arecanut divided into say, defined sizes of arecanut pieces.

12. In view of the facts stated supra, it is clarified that this product can only be classified as 'Ground arecanut' which is classifiable under the HSN Code 0802.90.13 and consequently under Entry 2(1) of the Third Schedule to the Kerala Value Added Tax Act, 2003, taxable at the rate of 5%.

## COMMISSIONER

To

1. Sri. A.C. Shivaraj,  
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M/s. Soumya Agencies,  
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2. Sri. A. R. Safiullah,  
M/s. S.A. Safiullah & Co.,  
Kannamedu,  
Kozhinjampara. P.O.,  
Palakkad.
3. Sri. A. R. Safiullah,  
Managing Director,  
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4. M/s. The Betel Nut Manufacturers Association,  
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5. Sri. K.V. Wilson,  
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