

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. T.K. Ziaudeen.
*Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

2. Dr. A. Bijikumari Amma.
*Joint Commissioner (A & I),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

3. N. Thulaseedharan Pillai.
*Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.*

Sub :- KVAT Act, 2003 – Clarification U/s 94 – whether the applicant has to pay tax on MRP on local sales - Orders issued.

Read:- Application dtd. 17-09-15 from Smt. Jabeen, Crescent Party Sales, Kochi

ORDER No.C3/32848/15/CT DATED 01/07/2017

1. Smt. Jabeen, Crescent Party Sales, Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification as to whether the applicant is eligible in paying tax on MRP on her local sales.

2. The applicant is a proprietary business concern having registration in Kerala and is a dealer in house hold utensils, casseroles, containers and exclusively purchasing goods from M/s. Tupperware [India] Pvt. Ltd., Haryana. The applicant is selling goods within the State, to end customers as well as to agents who sells goods to end customers through home delivery. The applicant has submitted that M/s. Tupperware [India] Pvt. Ltd., Haryana is a Multi-level marketing entity.

3. The request of the applicant is to clarify -

- a) whether the applicant has to pay tax on MRP on her local sales
- b) whether her agents who purchases goods from her have tax liability

4. The applicant has requested to issue clarification based on the statement of facts submitted by her.

5. The issue was examined. As per sec. 2(xxviiB) of KVAT Act, 2003 multi-level marketing entity *means a company registered under the Companies Act, 2013 (Central Act 18 of 2013) or any partnership firm registered under the Partnership Act, 1932 (Central Act IX of 1932) or under the Limited Liability Partnership Act, 2008 (Central Act 6 of 2009) engaged in multi-level marketing*". As per guidelines issued by the Government of Kerala, conditions for permissible Direct Selling are as follows:

- (i) Every Direct Selling Entity operating within the State should have
 - (a) Registered under the KGST Act, 1963/KVAT Act, 2003, Income Tax Act;*
 - (b) Licenses as may be required as per the Laws of the State/Centre;*
 - (c) The Partnership deed or Memorandum of Association should clearly state their nature of business;**
- (ii) The Direct Selling Entity should pay sales incentive to Direct Sellers at the agreed rate within the agreed period;*
- (iii) The Direct Selling Entity should have an official website which should contain the names and identification numbers of their authorised Direct sellers and provisions for registering complaints by the consumers;*
- (iv) The Direct Selling Entity should have a consumer grievance cell that should ensure redressal of consumer grievances within seven days from the date of making such complaints.*

6. In the present case, even though M/s. Tupperware is a Multi-level Marketing Company as claimed by the applicant, the same is not registered under the KVAT Act. And the applicant being a proprietary concern, it cannot be considered as a multi-level marketing entity as defined u/s. 2(xxviiB) of the KVAT Act. From the statement of facts mentioned in the application, it is not clear as to the manner in which the applicant effects sale to her end customers.

7. In view of the above facts, it is hereby clarified that since the constitution of the business entity is not that of a company, or a partnership firm, the applicant cannot pay tax on MRP. Instead, the applicant needs to pay tax on the actual selling price. Further, persons who purchase goods from the applicant cannot be treated as her agents. So, such persons will incur tax liability if the total turnover for a year is not less than ten lakh rupees.

The issues raised above are clarified accordingly.

T.K. Ziavudeen
Joint Commissioner (Law)
O/o CCT

Dr. A. Bijikumari Amma
Joint Commissioner (A&I)
O/o CCT

N. Thulaseedharan Pillai
Joint Commissioner (General)
O/o CCT

To

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P J Antony Road, Pachalam,
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