

**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. K.M. Althaf, Joint Commissioner (Audit & Inspection), O/o CCT, Tvpm.  
[Formerly Deputy Commissioner (Intelligence), Tvpm]
2. R. Rajasekharan Nair, Deputy Commissioner (Intelligence), O/o. DC (Int),Tvpm.  
[Formerly Deputy Commissioner (Audit & Inspection), O/o CCT, Tvpm]
3. A. Asok Kumar, Deputy Commissioner (Internal Audit), O/o.CCT, Tvpm.

Sub: KVAT Act, 2003 – Clarification U/s.94 – Rate of tax of Milk-up – Orders Issued.  
Ref: Application from M/s. Vijai Group Companies, Adoor dated 9/9/2009.

**ORDER No.C3/37723/09/CT DATED 26/3/2010.**

1. M/s Vijai Group Companies, Adoor has preferred an application U/s 94 of the Kerala Value Added Tax Act,2003 seeking clarification on the commodity **Milk-up** marketed by the applicant.

2. The applicant contends that they are marketing a product under the brand name **Milk-up** which is a mineral mixture for cattles, buffaloes and goats. The mineral feed supplement consisting mainly of food supplements like Calcium, Phosphorous, Manganese, Iodine, Zinc, Copper, Ferrous is used as a cattle feed supplement for improving the milk production and health of live stocks. The applicant contends that the commodity falls under the Entry 3(5) of the First Schedule to the Act with HSN Code 2309 and is exempted from tax. The assessing authority has raised objection that the commodity is an unclassified item and hence taxable at 12.5%.

3. The applicant has relied on the decisions of the Hon'ble Supreme Court in Sun Export Corporation Vs Collector of Customs, Bombay reported in (1999) 7 KTR 21 SC and 71 STC 21 SC and the decision of Hon'ble STAT, Tvpm in Order No. TA 483, 484 and 485/99 dated 10/7/2000 and contends that in the case of assessments relating to the applicant for the three previous years, it was held that the mineral mixture under the brand name 'Milk-up' falls under cattle feed. The orders of the Tribunal are binding on the authorities below until the orders are reversed by the High Court/Supreme Court as held by the Supreme Court vide decision reported in 1992 Supp(1) Supreme Court Cases.

4. The applicant further contends that in the Entry 3 of the First Schedule, it has been specified that all cattle feed excluding those specifically mentioned in Third Schedule are exempted. The applicant contends that only following cattle feed is specifically mentioned in Third Schedule i.e. Entry 93 – Oil Cakes (Expeller variety and solvent extracted) and is taxable at 4%.

5.The applicant has also submitted a sample of the packing case in which the product is sold. The applicant has contended that the mineral mixture sold by the applicant under the brand name **Milk-up** falls squarely within the ambit of cattle feed and falls under Entry 3(5) of the First Schedule. He has requested to clarify the rate of tax of the product.

6. The authorised representative of the applicant was heard and the contentions raised were examined.

7. Entry 3(5)(g) of the First Schedule to the Act reads:

*3 Aquatic feed, poultry feed, cattle feed and their supplements including husk of pulses, additives and concentrates, grass and hay, but excluding those specifically mentioned in Schedule III*

*5 Preparations of kind used in animal feeding*

*g Other preparations of animal feeds*

2309.90.90

8. As per the Customs Tariff Act HSN 2309 falls under Chapter 23. Chapter Notes to Chapter 23 states *Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.* Since the words used in the Chapter Notes is “includes”, the description of HSN 2309 is not exhaustive and does not seem limited to *obtained by processing vegetable or animal materials*. Also the Heading of Entry 3 of the First Schedule reads “*3 Aquatic feed, poultry feed, cattle feed and their supplements including husk of pulses, additives and concentrates, grass and hay, but excluding those specifically mentioned in Schedule III.*” Hence the product Milk-up is classifiable under the HSN Code 2309.90.90 which falls under Entry 3(5)(g) of the First Schedule to the Kerala Value Added Tax Act, 2003 and is exempted.

The issues raised above are clarified accordingly.

Joint Commissioner (A&I)  
O/o CCT  
[Formerly DC (Int)Tvpml]

Deputy Commissioner (Int)  
O/o DC(I) Tvpml  
[Formerly DC (A&I),Tvpml]

Deputy Commissioner (IA)  
O/o CCT

To,

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