Members present are:

1. C. Lalappan.
   Joint Commissioner (Audit & Inspection),
   Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. T.K. Ziavudeen.
   Joint Commissioner (General),
   Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. V.J.Gopakumar.
   Deputy Commissioner (General),
   Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.


2. Judgment of the Hon’ble High Court of Kerala in WP(C) 5597 of 2014(Y) dtd. 3/3/2014.
3. This Office letter of even No. dtd. 8/8/2014.

ORDER No.C3/17533/13/CT DATED 15/10/2014.


2. The applicant would contend that there is confusion now prevailing amongst the traders and the Department as to the correct rate of tax applicable to ‘Kanni Pukayila’.

3. The applicant would contend that the product ‘Kanni Pukayila’ belongs to the genus NICOTINE TOBACCUM. It is a tobacco product mainly used by the people of Kerala for chewing purposes along with betel leaf. ‘Kanni Pukayila’ is mainly grown in Tamil Nadu especially in Coimbatore district. The process involved in preparing the product is extracted hereunder:

   It would take 4-5 months for the tobacco plant to attain the full growth. The harvesting is in December to January when the cultivators get mist in the night which is essential for curing. There will be maximum 5 leaves in plant out of which 2 will be big and others comparatively small. The plant will be cut at the stem and then hanged downwards in a separate enclosure (like a Pandal) for the purpose of sun curing. After a few days, the colour of these leaves would change from green to brown which happens because of loss of chlorophyll.
Then the dried leaves are taken to building where it is stacked one on the top of the other. These leaves will be sprinkled with jaggery water every day so that the leaves will be pliable and flexible. If the jaggery water is not sprinkled then the leaves will become brittle and may get broken easily. No water is sprinkled. This process will continue for another few weeks.

Then 4 or 5 leaves will be tied together at the top with a tobacco leaf. Then it will be laid in the floor and stacked together so as to get heat so that the smell of jaggery is removed and smell of tobacco is obtained. After a few days these are bundled together and sold.

4. The applicant placing reliance on the decision of the Hon’ble Madras High Court in A.V. Pachiappa Chettiyar and Another Vs. State of Madras 13 STC 202 (Mad) would contend that Hon’ble Court had clearly laid down in the said judgment that the product till the stage described above remains as unmanufactured tobacco as no manufacturing process has been employed. The applicant would also contend that as per the decision of the Hon’ble Central Excise Tribunal in the case of Commissioner of Central Excise, Salem Vs. Muthu Velappa Gounder & Sons reported in 2010 (256 ELT 320 TRI - Chennai), merely curing the tobacco outside the premises by treating the same with jaggery water shall not amount to manufacture and it shall continue to be classified as unmanufactured product falling under heading 24.01 of the Central Excise Tariff Act, 1985.

5. The applicant would further contend that as per the scheme of arrangement of Tobacco and its products in Chapter 24 of the Central Excise Tariff Act, 1985, Heading 24.01 starts with Unmanufactured and raw tobaccos, heading 24.02 deals with Cigars, cheroots, cigarillos etc. Heading 24.03 deals with fully manufactured tobacco including chewing tobaccos like gudka etc. The applicant’s contention is that Kanni Pukayila would fall under 24.01 and is to be classified as unmanufactured tobacco as held by the Hon’ble Madras High Court and the Central Excise Tribunal in the decisions quoted supra.

6. The applicant has requested to clarify the rate of tax applicable to ‘Kanni Pukayila’ under the Kerala Value Added Tax Act, 2003.

7. The Hon’ble High Court of Kerala in its judgment read as paper 2nd above has directed this Authority to consider and pass orders on the application for clarification.

8. Accordingly, Sri. Sivadas Chettoor, Chartered Accountant, the authorised representative of the applicant was heard in the matter and the contentions raised were examined.
9. The sample of the commodity produced by the applicant at the time of hearing would show that the impugned product is unmanufactured tobacco leaves, dried and treated with jaggery water to prevent moulding and drying.

10. The Hon’ble High Court of Madras in its decision in Bell Mark Tobacco V. Government of Madras (1961) 12 STC 126 had termed the process stated supra as ‘curing only and not manufacturing’. Subsequently, this position was affirmed by the Hon’ble High Court of Madras in A.V. Pachiappa Chettiar & Anr. Vs. State of Madras (1962) 13 STC 202 Mad.

11. For the purpose of HSN Code also, this position has been upheld by the CESTAT, South Zonal Bench, Chennai in Commissioner of Central Excise, Salem Vs. Muthuvelappaa Gounder & Sons 2010 (256) ELT 320 (Tri. - Chennai). The operative portion of the said decision reads:

The respondents are merely curing the tobacco outside their premises by treating the same with jaggery water for preventing moulding and drying. Such treatment merely results in production of cured tobacco which as per the HS Explanatory Notes under Heading 2401 remains covered as unmanufactured tobacco under the said heading.

12. Based on the above facts, it can safely be concluded that the product Kanni Pukayila would fall under the HSN Code 2401. This HSN Code does not appear in any of the Schedules to the Kerala Value Added Tax Act nor in Section 6(1)(d) of the Act.

13. As such, it is clarified that the commodity Kanni Pukayila classified under the HSN Code 2401 would be taxable at the rate of 14.5% by virtue of Entry 103 of S.R.O. No. 82/2006.

The issues raised above are clarified accordingly.

C. Lalappan
Joint Commissioner (A&I)

T.K. Ziavudeen
Joint Commissioner (General)

V.J.Gopakumar
Deputy Commissioner (General)

To,

Sri. Sivadas Chettoor,
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Metro Building, Market Road,
Palakkad – 678 014.