

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. Abdul Jabbar.V.K, Joint Commissioner (General), O/o. CCT, Tvpm.***
- 2 T.V. Kamala Bai, Joint Commissioner (Law), O/o. CCT, Tvpm.***
- 3. S.K. Suchala Kumar, Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.***

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of Multimedia Speaker, Scanner, MP3 Player, Web Camera, Sound Card and DVD Writer – Orders issued.

Read:- Application from M/s. All Kerala IT Dealers Association, Kottayam dtd.
8/7/2011

ORDER No.C3/23539/11/CT DATED 9/1/2012.

1. M/s. All Kerala IT Dealers Association, Kottayam has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of Multimedia Speaker, Scanner, MP3 Player, Web Camera, Sound Card and DVD Writer.

2. The applicant is the association of dealers of computers, peripherals and accessories. The applicant contends that assessing authorities are issuing notice pointing out that DVD writers, Sound Cards, Web Cameras, Speakers, Scanners, MP3 Players etc. are taxable at 12.5%.

3. The applicant contends that Computer peripherals can be defined as a device attached to a host computer, but not part of it, and is more or less dependent on the host. The gist of the contentions raised by the applicant are as follows:

Multimedia speakers which falls under the HSN Code 8518.22.00 consisting of built – in amplifier can perform only with a computer system and hence would fall under computer peripherals. Scanners other than the medical scanners are devices that optically scan images,

printed texts etc. and convert it to a digital image. They are input devices used with computers only and will fall under computer peripherals. MP3 Players are like a pen drive (flash drive) and the only additional facility is the play back music. Computer is needed to add music into this device or charge this device. Sound Card is a computer expansion card that facilitates the input and output of audio signals to and from a computer under control of computer programs. It converts recorded or generated digital data into an analogue format. Almost all computer's mother board have built in sound – capabilities. When it fails or when more quality sound is required, then sound cards are used which can be connected to computer mother boards only. Sound card has no existence as such and hence it is to be treated as a computer peripheral. The applicant contends that DVD Writer is the upgraded form of CD ROM used exclusively in computers, coming under computer parts.

4. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

5. Multimedia speaker falls under the HSN Code 8518.22.00. The said HSN Code is included in the Third Schedule Entry 69(2)(b) and hence would be taxable at 4 %.

6. Scanner which is included in the HSN code 8471.60.50 would be taxable at 4% vide Entry 69(22)(a) which reads Computer systems and peripherals with HSN Code 8471.

7. The HSN Code of MP3 player is 8519.89.40. This is a music player device and is having an independent existence. The said HSN Code does not appear in any of the Schedules and hence would be taxable at 12.5% vide Entry 103 of S.R.O. No. 82/2006.

8. The rate of tax of Web camera has already been clarified vide order No. C3/19251/09/CT dtd. 24/08/09 as 4% and hence the clarification application thereto is declined.

9. Sound card (also known as an audio card) is an internal computer expansion card that facilitates the input and output of audio signals to and from a computer under control of computer programs. The term *sound card* is also applied to external audio interfaces that use software to generate sound, as opposed to using hardware inside the PC. It can be included in the HSN category 8523. The said HSN Code appears in Entry 69(4) of the Third Schedule to the Act which reads *Discs, tapes, solid state non volatile storage devices, "Smart*

cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37, and hence would be taxable at 4%.

10. As per Entry 69(22)(a) of the Third Schedule to the Kerala Value Added Tax Act, 2003, Computer systems and peripherals with HSN Code 8471 are taxable at 4%. HSN Code 8471.70.60 of the Customs Tariff Act deals with CD - ROM drive and 8471.70.70 deals with Digital Video Disc drive and 8471.70.90 deals with Other.

In an issue related to the classification of a 'CD Writer', Bangalore Customs House adopted the classification 8471.90 'Other' for the classification of 'CD Writer' as against 8471.70 adopted by other Customs Offices. 8471.70 specifically mentioned 'CD Drives'. The Customs Authorities took up the matter with World Customs Organization for the interpretation and subsequently a clarification Circular No – 55/2011 Customs was issued wherein it was stated that:

The matter has since been examined in consultation with the World Customs Organisation (WCO) and Ministry of Information Technology (MIT). The WCO had clarified in the context of classification of an apparatus called Yamaha CRW 4416 capable of recording data (software, audio or video) on compact discs (a so-called CD-Rewriter) that the said apparatus would fall under sub-heading 8471.70. The functions of the apparatus at issue (i.e. writing or re-writing, and reading compact discs) are, in the view of the WCO Secretariat, captured by the expression "storing of data on discs". In conclusion, the Secretariat had opined that the product would merit classification under heading 84.71 (sub-heading 8471.70) by application of GIRs 1 and 6, which excludes, ipso facto, classification in sub-heading 8471.90.

The MIT has clarified that CD-Writers also have reading facility, i.e., CD-Writer can read as well as write and store the data on media. These are similar to Floppy Disc Drives (FDD) and Hard Disc Drives (HDD) where both the read and write functions are present. Both FDDs and HDDs are storage devices and are classified under ITC (HS) 8471.70 and, therefore, CD-Writer may also be considered as a storage device and can be classified under ITC (HS) 8471.70.

11. Hence 'CD Writers' were classified in the Entry of 'CD Drives'. The issue was settled when the Customs Tariff Act followed six digit codes. Now, it is following eight digit codes. Even so, the rationale still applies and it can be aptly imported in the case of 'DVD Drives' and 'DVD Writers' also. Hence, 'DVD Writers' would fall under HSN Code 8471.70.70

or 8471.70.90 and hence, would be taxable at 4% vide Entry 69 (22)(a) of the Third Schedule with HSN Code 8471.

The issues raised by the applicant are clarified accordingly.

Abdul Jabbar.V.K.
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