

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.V. Kamala Bai.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. Suchala Kumar. S.K.
Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. Mathew Thomas.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub:- KVAT Act, 2003 – Clarification U/s 94 – Whether Burger is cooked food – Orders issued.

Read:- Application from M/s. Hard Castle Restaurants Private Limited, Mumbai dtd. 30/7/2012.

ORDER No.C3/25969/12/CT DATED 23/4/2013.

1. M/s. Hard Castle Restaurants Private Limited, Mumbai has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on whether Burger would fall within the meaning of cooked food.

2. The applicant intends to expand their existing chain of McDonald's restaurants by starting new restaurants in the State of Kerala. The main item to be prepared and served will be Burgers.

3. The applicant has detailed the process of cooking carried out to prepare burger which is extracted hereunder:

a. Bread: Bread i.e. Bun or Muffin which is used as a product component is either stored at room temperature or in frozen condition at -18 degree Celsius. Frozen breads before use is brought to room temperature by thawing. Bread is toasted at 420 Deg F with the help of Toaster. By virtue of toasting, the sugar present in the bread burns at this high temperature and gets caramelized. This turns the bread down on its surface and provides characteristic roasted flavour to bread. Toasting also causes the starch molecules present in the bread first to break apart and gets gelatinized at this high temperature to form new combination of atoms. This chemical reaction makes the inner surface of the bread hard and crisp. It facilitates for spreading and retention of dressing sauces on the surface of the bread and provides a unique and crispy bite to burger which is most liked by the customer. Bread is also cooked in steamer for Filet – O – Fish burger. Heat present in steam gelatinizes the starch present in bread and helps it to develop a

delicate aroma, and further, moisture present in steam migrates inside bread and provides a soft and spongy texture to the bread.

b. Patty: *It is the filling between the burger bun halves. Semi – cooked patty is purchased in frozen state. It is cooked at the restaurant either by heating on grill or by deep frying in oil. Patty is cooked by the following means:*

- i. heating on grill at 375 to 400 Deg F for minimum 4 mins or*
- ii. Deep – frying in vegetable oil at 360 Deg F for minimum 3 mins.*

Patty which is cooked by deep frying at the restaurants contain diced blend of vegetables (veg – patty) or minced blend of chicken / fish (non-veg patty) and are coated by breading materials consisting of bread crumbs, corn meal, cracker meal and various prepared batter mixes and batters containing pre-gelatinized corn flour which provides coatings. Patties which are cooked by heating on grill contain minced meat with Starch binders and spices which releases delicate, characteristic grilled aroma during cooking.

4. The applicant contends that when patties are cooked by way of deep – frying in oil or heating on grill, irreversible physical and chemical changes like mass transfer, heat transfer, heat removal, interior cooking, oil food interactions occur in the patties. Hydrolysis, auto-oxidation, dehydration, polymerization and millard reactions also takes place in their cooking. The applicant contends that in view of the above, burgers undergo cooking process in their restaurant.

5. The applicant also contends that bun is toasted and the patty is fried only on the receipt of the order from the customer. It is pertinent to note that the bun and the patty are held in hot trays and the hot trays have a holding time of as low as 15 mins depending upon the type of the patty. Only when both the bun and the patty are fresh and hot the stuffing ingredients bind well to give the characteristic McDonalds taste. The burgers are served hot.

6. The applicant has referred sub-clause (i) of clause (c) of Section 8 of the Kerala Value Added Tax Act, 2003 and Entry 30A of the Third Schedule and would contend that the said sub-clause and the Schedule Entry only states that the person should be a dealer in cooked food and hence the pertinent point to be decided is whether burger is a cooked food. As cooked food is not defined in the Act, the applicant contends that resort should be had to its dictionary meaning and also the meaning attributed to the said term by the Courts in **Harrisons Malayalam & Another Vs. Union of India [138 STC 610 (SC)]**, **State of Gujarat Vs. Gokuldas Trading Co. [82 STC 248 (Guj)]** and **Commissioner of Sales Tax Vs. Regal Dairy [47 STC 374 (ALL)]**.

7. The applicant placing reliance on the above said judgments would contend that for a food item to be called as cooked food, the conditions to be satisfied are:

- (a) It should be a food, taken during the meal hours; and
- (b) It should be prepared by heating, boiling etc;

8. The applicant contends that burger satisfies both the above said conditions and hence it is a cooked food.

9. The applicant placing reliance on the Clarification Order No. C3/36782/11/CT dated 10/2/2012 would contend that since they run a restaurant, the said clarification is squarely applicable to them and also compounding. The applicant would further contend that in the clarification order, it was stated that the benefit of compounding cannot be granted to bakery products. The term bakery products is not defined in the Act. Entry 7 of the Third Schedule deals with bakery products. The applicant would contend that the High Court in **91 STC 291** has clearly held that bakery products should be understood to mean only goods which are ordinarily baked in the bakery. Here bun is toasted and the patty is fried. Therefore burger is not a bakery product. For the said reason burger will not fall under Entry 7 of the Third Schedule.

10. The applicant would also contend that Entry 11 of S.R.O. No 82/2006 covers only crisp bread, ginger bread, sweet bread, biscuit etc. Moreover the entries referred to are covered by Chapter 19 of the Customs Tariff Act. In common parlance, burger cannot be called as bread. Therefore burger will not fall under Chapter 19 or various entries stated in Entry 11 of the S.R.O. No. 82/2006.

11. The applicant has requested to clarify whether burger falls within the meaning of cooked food.

12. The authorized representative of the applicant was heard in the matter and the contentions raised were examined.

13. Without frying the bun and the burger patties in the micro wave oven, it cannot be served to the customer.

14. There is no dispute that microwaving is a form of cooking. In the instant case, semi-cooked burger patty and bun are purchased by the restaurant, and are microwaved and added with vegetables before serving to the customer. It is served to the customer, on demand, across the table.

15. In common parlance bakery product is meant as one which can be sold as such without any processing, across the counter. But in the case of burger,

different cooking processes are involved before being served to the customer. So it satisfies the criteria of cooked food. As such it is clarified that burger falls within the meaning of cooked food.

The issues raised above are clarified accordingly.

T.V. Kamala Bai
Joint Commissioner (Law)

Suchala Kumar. S.K.
Joint Commissioner (A&I)

Mathew Thomas
Joint Commissioner (General)

To,

M/s. R. Krishna Iyer & Co.,
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