

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. Suchala Kumar. S.K.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes,
Thiruvananthapuram.

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

3. P.S. Soman.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes,
Thiruvananthapuram.

Sub : KVAT Act, 2003 – Rate of tax of Margarine – Clarification order is not maintainable U/s 94(4) of the Act since the Hon'ble High Court of Kerala has already rendered judgment on the subject matter – Clarification withdrawn – Orders issued.

Read : 1. Order No. C3/21062/12/CT dtd. 9/10/2012 of the Authority for Clarification U/s 94 of the Kerala Value Added Tax Act, 2003.

2. Letter No. O.T.A. No. 7/2012 of Sri. George Mecheril, Special Government Pleader (Taxes), Advocate General's Office, Ernakulam dtd. 17/10/2013.

ORDER No.C3/30401/13/CT DATED 23/12/2013.

1. The Authority for Clarification U/s 94 of the Kerala Value Added Tax Act, 2003, vide the clarification order read as 1st paper above had disposed an application from the Inspecting Assistant Commissioner (Commercial Investigation), Commercial Taxes, Thiruvananthapuram clarifying that the commodity Margarine having HSN Code 1517.10 would be taxable at the rate of 13.5% vide Entry 64(8) of the S.R.O. No. 82/2006.

2. Now, Sri. George Mecheril, Special Government Pleader (Taxes), Advocate General's Office, Ernakulam vide his letter read as 2nd paper above has informed that the Hon'ble High Court has already rendered judgment on the very same issue on 8.6.2010 in OT.R.24/2010. The gist of the impugned case is as follows:

M/s. SSD Oil Mills Company Ltd., Kochi had filed the O.T. (R.V) No. 24 of 2010 before the High Court of Kerala wherein the question raised was whether the Kerala Value Added Tax Appellate Tribunal, Ernakulam was justified in holding that "margarine" is an item falling under Entry 64(8) (HSN No.1517.10) taxable at 12.5% under notification S.R.O. No. 82/06 issued by the Government under Section 6(1)(d) of the Kerala Value Added Tax Act and not an item falling under Entry 38(19)(d) of the IIIrd Schedule of the KVAT Act, which provides for other edible oils, including vanaspathi.

The Hon'ble High Court of Kerala in its judgment dated 8/6/2010 had held that ***the contention of the petitioner that the item falls under Entry 38(19)(d) of the IIIrd Schedule to the KVAT Act cannot be accepted because none of the items covered by the sub entry 19 has the same HSN code for margarine provided in the Customs Tariff. We are of the view that petitioner's contention that margarine falls under other edible oils falling under Entry 38(19) is incorrect and unacceptable. We, therefore, hold that margarine in all forms fall under HSN code 1517 under the Customs Tariff and consequently it is covered by Entry 64(8) of S.R.O. No. 82/06, which has the same HSN Code taxable at 12.5%. Hon'ble Court also observed that the legislature never intended margarine to be covered along with oils under the IIIrd Schedule.*** The Court upheld the order of the Kerala Value Added Tax Appellate Tribunal, Ernakulam and dismissed the O.T.R.V. Case.

The Special Government Pleader (Taxes), Advocate General's Office, Ernakulam has also opined that ***the clarification is not maintainable in view of Section 94(4) of the KVAT Act as the Hon'ble High Court has already rendered judgment on the very same issue on 8.6.2010 in OT.R.24/2010. So long as the judgment of the Division Bench of the Hon'ble High Court of Kerala in SSD Oil Mills Case stands, it is better to withdraw Order No. C3/21062/12/CT dated 9/10/2012 impugned in OTA No. 7/12.***

3. As per Section 94(4) of the Kerala Value Added Tax Act, 2003 where any question arises from any order already passed or any proceedings recorded under this Act, or any earlier law, no such question shall be entertained for determination under sub-section(1) of Section 94. While issuing the clarification order read above, the judgment of the Hon'ble High Court in OT. Rev. No. 24 of 2010 dated 8/6/2010 was not brought to the notice of this Authority.

4. In view of the circumstances stated above, the clarification order No. C3/21062/12/CT dtd. 9/10/2012 with respect to Margarine is hereby withdrawn, since the Hon'ble High Court has already decided that Margarine is taxable at 12.5% i.e. the Revenue Neutral Rate prevailing on the date of the judgment.

Suchala Kumar. S.K	C. Lalappan	P.S. Soman
Joint Commissioner (General)	Joint Commissioner (A&I)	Joint Commissioner (Law)

To,

Sri. B.S. Thyagaraja Babu,
Inspecting Assistant Commissioner (Commercial Investigation Wing),
Commercial Taxes Department, Thiruvananthapuram.

Copy to:- The Deputy Commissioner (Thiruvananthapuram, Kollam, Pathanamthitta, Alappuzha, Kottayam, Idukki, Ernakulam, Mattancherry, Thrissur, Palakkad, Malappuram, Kozhikode, Wayanad, Kannur, Kasaragod) / Deputy Commissioner (Intelligence) Thiruvananthapuram, Ernakulam, Kozhikode) - It is directed that while initiating / finalizing any assessments or other proceedings under the Act with respect to Margarine for demand of tax at the rate of 12.5%, 13.5% or 14.5% as the case maybe, the judgment of the Hon'ble High Court referred above shall be relied upon in the order in lieu of the clarification order.

Copy to:- the Disposal of File No. C3/21062/12/CT / File / SF.