

CIRCULAR No. 06/06

Sub:- KVAT Act 2003- Live Chicken business- Calculation of rebate on account of loss of weight and mortality- directions- issued- reg:

Ref:- 1.This Office Circular No. 19/ 2002 dated 05.06.02 of the CCT,Tvpm
2.Judgment in W.A no. 1974/ 05 dated 27.09.05 of the Hon'ble High Court of Kerala.

As per the circular read as first paper above directions were issued to officers to allow 1% of standard mortality rate for the purpose of imposing of tax on live chicken subject to certain conditions.

But the Sales Tax Appellate Tribunal while disposing an appeal on 22.11.2004 had granted 25.99% allowance towards mortality and weight loss for the purpose of imposition of tax, which was questioned before the Hon'ble High Court of Kerala in Writ Petition No. 22182/ 05.

The Hon'ble Court held on 28..07..2005 that 25.99 % allowance towards mortality and weight loss in chicken business granted by the Sales Tax Appellate Tribunal in its order dated 22.11.04 can not be upheld in the absence of concrete evidence, and that Government is competent to prescribe conditions for allowing loss on account of mortality by proof of disposal of carcasses of dead birds or to arrange for a scheme for inspection before disposal of carcasses. This was upheld in Writ Appeal No. 1974 of 2005 by the Hon'ble High Court of Kerala in its order dated 27.09.05.

In view of the above developments, the following conditions for allowing loss on account of mortality are prescribed in exercise of the powers conferred by sub-section (c) of section 3 of KVAT Act 2003;

1. No weight loss or mortality shall be allowed by the Check Post officials while collecting Entry Tax on transport of live chicken.

2. At the assessment stage, if mortality is claimed, it should be limited to the percentage fixed by the Department in consultation with the Animal Husbandry Department. The claim for higher percentage towards death etc shall be allowed only on inspection of carcasses of dead birds by the assessing authority.
3. If weight loss or mortality is claimed by the assessee in excess of percentage fixed by the Department in the monthly return, the return shall be rejected and best judgment assessment made after due notice to the claimant

The above instructions should be strictly adhered to.

The receipt of the circular shall be acknowledged by all officers

Sd/
Commissioner

/ Approved for Issue/

Asst. Commissioner. II

To

All Officers

CAs to CCT,JC-I/ DC(G)/ DC(A&I)/ DC(LW)

The JC(Law)Ekm/ VAT Consultant / DC(I) TvpM for website

The Secretary, STAT,TvpM/ AC(T) TvpM/ All IACs in CCT

All Supdts. In CCT/ file/ SF/ Spare