# Mas Make Polymers vs Authority for Clarification

Mas Make Polymers vs Authority for Clarification

**SooperKanoon Citation** : sooperkanoon.com/1364686

**Court** : Kerala

**Decided On :** Feb-20-2023

**Judge** : Honourable Dr. Justice a.K.Jayasankaran Nambiar,Honourable Mr.Justice Mohammed Nias C.P.

**Appeal No.** : OT.Appeal/7/2016

**Appellant** : Mas Make Polymers

**Respondent** : Authority for Clarification

**Advocate for Pet/Ap.** : Sri. S. Anil Kumar

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. MONDAY, THE 20TH DAY OF FEBRUARY 2023 / 1ST PHALGUNA, 1944 OT.APPEAL NO. 7 OF 2016 AGAINST THE ORDER/JUDGMENTOTHERS 34789/2015 OF KVAT APPELLATE TRIBUNAL APPELLANT/S: MAS MAKE POLYMERS VELLALACHIPOTTA, ELAPULLI,EDUPPUKULAM P.O., PALAKKADD, REPRESENTED BY ITS MANAGING PARTNER,SRI. K.P.ABDUL SALEEM. BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)

SRI.K.S.HARIHARAN NAIR RESPONDENT/S: 1 AUTHORITY FOR CLARIFICATION REPRESENTED BY THE JOINT COMMISSIONER(GENERAL),COMMERCIAL TAXES, TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM-695002. 2 COMMERCIAL TAX OFFICER 3RD CIRCLE, COMMERCIAL TAX OFFICE COMPLEX,NEAR CIVIL STATION, PALAKKAD-678002. 3 INTELLIGENCE OFFICER I.B. COMMERCIAL TAXES, CIVIL STATION ANNEXE, ALAPPUZHA-678002.

OTHER PRESENT: GOVERNMENT PLEADER SMT. MM JASMINE THIS OTHER TAX APPEAL HAVING COME UP FOR ADMISSION ON 20.02.2023, ALONG WITH OT.Appeal.18/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. MONDAY, THE 20TH DAY OF FEBRUARY 2023 / 1ST PHALGUNA, 1944 OT.APPEAL NO. 18 OF 2016 APPELLANT/S: GLISTER SACHET INDIA PVT.LTD V/774-AK:KINFRA:KAKKANCHERRY:MALAPPURAM:673604: REPRESENTED BY DIRECTOR YOONUS MAHAJAS BY ADVS. SRI.P.RAGHUNATH SRI.PREMJIT NAGENDRAN RESPONDENT/S: COMMISSIONER OF COMMERCIAL TAXES THIRUVANANTHAPURAM (AUTHORITY UNDER SECTION 94 OF THE KVAT ACT) THIS OTHER TAX APPEAL HAVING COME UP FOR ADMISSION ON 20.02.2023, ALONG WITH OT.Appeal.7/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3: A.K.JAYASANKARAN NAMBIAR &

**MOHAMMED NIAS C.P., JJ**

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Dated this the 20th day of February, 2023

## JUDGMENT

**A.K. Jayasankaran Nambiar, J.**

As both these tax appeals impugn a common order dated 9-3-2016 of the Authority for Clarification under Section 94 of the Kerala Value Added Tax Act, 2003 (for short the KVAT Act) they are taken up for consideration together and disposed by this common

## judgment.

2. The appellant in O.T. Appeal 7/2016 had preferred an

application under Section 94 of the Kerala Value Added Tax Act before the Authority for clarification seeking a clarification on the rate of tax applicable to the article Thermocol disposable plate during the assessment years 2013-2014 and 2014-2015. While it was the case of the applicant that the item in question merited classification under Entry 174 (8) of List A of the Third Schedule to the KVAT Act attracting the tax rate of 5% ad valorem, the department was prima facie of the :4: view that the item in question would be covered by Entry 3A in the table under Section 6(1) of the Act, which dealt with 'disposable plates, cups, and leaves made of plastic' attracting tax at the rate of 20% ad valorem on all points of sale within the State.

3. The Authority for clarification considered the amendment

that was effected to Entry 3A in the Table under Section 6 (1) of the Act through the Kerala Finance Act,2015 which included the words including styrofoam and styrofoam sheets to the said entry and thereby made the said items also liable to tax at the rate of 20% ad valorem on all points of sale in the State. The authority, thereafter, found that the Amendment of 2015 would be applicable only from 1-4-2015 and, therefore, clarified that the rate of tax of 20% ad valorem under Serial No. 3 A in the table under Section 6(1) of the KVAT Act would be applicable to the items only from 1-4-2015. Thereafter, however, the authority went on to clarify that for the period prior to 1-4-2015, the item Thermocol disposable plate was taxable at the Revenue Neutral Rate (RNR) specified against Entry 103 of SRO No. 82/2006, attracting tax at the rate of 14.5% ad valorem during the years 2013-

2014 and 2014-2015.

4. The appellants are aggrieved by the clarificatory order on

two counts. It s their submission that while the clarification was sought :5: specifically on the rate of tax applicable to 'Thermocol disposable plates' under the KVAT Act during the assessment years 2013-2014 and 2014- 2015 only, the authority for clarification had clarified that the rate of tax applicable was as specified against Entry 103 of SRO 82/2006 for all periods prior to 1-4-2015, which the appellants point out, has been construed by the department as the rate to be applied to the item, as per the said entry, for all assessment years commencing from 2006-07 and ending with 2014-2015. Secondly, they point out that as far as the clarification by the authority for clarification for the assessment years 2013-2014 and 2014-2015 is concerned, the State Government itself had subsequently, through a notification dated 13-11-2016, amended Section 6 of the KVAT Act and introduced as the 19 th proviso thereunder, a provision that made it clear that the rate of tax on the sale of disposable plates and cups made up of styrofoam, would be 5% for the financial years 2013 -2014 and 2014-2015. It is their contention that in the light of the subsequent legislative intervention which clarified that the rate of tax on the product in question during the relevant years namely, 2013- 2014 and 2014-2015, was only 5%, the impugned order of the authority for clarification had necessarily to be set aside in its application for the said assessment years.

5. We have heard Sri. S. Anil Kumar, learned counsel for the

appellant in OT Appeal 7 of 2016 and Sri.Premjith Nagendran, learned :6: counsel for the appellant in OTA. No. 18 of 2016. We also heard Smt. M.M.Jasmine, the learned Government Pleader for the respondents.

6. On a consideration of the facts and circumstances of the

case, and the submission of the learned counsel, we find that in relation to the query that was before the authority for clarification, namely the rate of tax applicable to the product Thermocol disposable plate during the assessment years 2013-2014 and 2014- 2015, the amendment to Section 6 of the KVAT Act through the notification dated 13-11-2016 of the State Government, clearly settles the issue regarding classification and rate of tax applicable to the product in question, for the said assessment years and makes it unambiguously clear that during the said assessment years the rate of tax applicable to the product would only be 5%. Incidentally, this was the same rate of tax that was applicable to products classifiable under Entry 174 (8) of List A under Third Schedule of the KVAT Act during the said period, and the rate adopted by the appellants as well. We, therefore, set aside the impugned order of the authority for clarification on this aspect taking note of the subsequent amendment brought out to Section 6 of the KVAT Act through the notification aforementioned.

7. By way of abundant caution and taking note of the

:7: apprehension voiced by the learned counsel appearing for the appellants, that the impugned order of clarification of the authority for clarification cannot be seen as applicable to any of the assessment years prior to 2013 -2014 under the KVAT Act since the query by the applicant before the authority for clarification was specific and confined to the rate of tax applicable to the product in question for the assessment years 2014-2013 and 2014-2015, we make it clear that the clarification given in this regard by the authority of clarification under Section 94 of the KVAT Act shall be seen as applicable only in relation to the assessment years 2013-14 and 2014-15 and shall not be taken as applying to periods prior to or subsequent to the said assessment years. The OT Appeals are disposed as above by setting aside the impugned order of clarification. Sd/- A.K.JAYASANKARAN NAMBIAR, JUDGE Sd/-MOHAMMED NIAS C.P., JUDGE ani/ /true copy/ :8: APPENDIX OF OT.APPEAL 7/2016 PETITIONER ANNEXURES Annexure I COPY OF THE RETURN FILED FOR THE YEAR 2013-14 Annexure 1 (a) COPY OF THE RETURN FILED FOR THE YEAR 2014-15

Annexure II COPY OF THE ASSESSMENT ORDER

BIOPOLYMER SCIENCE & TECHNOLOGY, KOCHI Annexure IV COPY OF THE PENALTY NOTICE DATED FOR THE YEAR 2013-2014 Annexure IV (a) COPY OF THE PENALTY NOTICE DATED FOR THE YEAR 2014-15 Annexure V COPY OF THE APPLICATION DATED 06/10/2015 FILED BY THE APPLICANT

BEFORE THE 1ST RESPONDENT U/S 94 OF THE ACT Annexure VI COPY OF THE JUDGMENT DATED 20/10/2015 IN WP(C) NO. 31994/2015 OF THIS HONOURABLE COURT. Annexure VII COPY OF THE ORDER DATED 19/10/2015 FOR THE YEAR 2013-14 BY THE 3RD RESPONDENT Annexure VII(a) COPY OF THE ORDER DATED 19/10/2015 FOR THE YEAR 2014-15 ISSUED BY THE 3RD RESPONDENT. Annexure VIII COPY OF THE JUDGMENT DATED 29/10/2015 IN WP(C) NO. 32945 OF 2015 Annexure IX COPY OF THE ORDER DATED 09/03/2016 ISSUED BY THE 1ST RESPONDENT U/S.94 OF THE ACT Annexure X COPY OF THE NOTICE DATED 15/4/2016 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2010- :9: 11 UNDER SECTION 25(1) Annexure X (a) COPY OF THE NOTICE DATED 15/04/2016 2011-2012 UNDER SECTION 25(1) Annexure X(b) COPY OF THE NOTICE DATED 15/04/2016 2012-13 UNDER SECTION 25(1) Annexure X(c) COPY OF THE NOTICE DATED 15/04/2016 2013-14 UNDER SECTION 25(1) Annexure X(d) COPY OF THE NOTICE DATED 15/04/2016 2014-15 UNDER SECTION 25(1) Annexure XI COPY OF THE NOTICE DATED 15/04/2016 2010-11 UNDER SECTION 67 Annexure XI (a) COPY OF THE NOTICE DATED 15/04/2016 2011-12 UNDER SECTION 67 Annexure XI(b) COPY OF THE NOTICE DATED 15/04/2016 2012-13 UNDER SECTION 67 Annexure XI(c) COPY OF THE NOTICE DATED 15/04/2016 2013-14 UNDER SECTION 67 Annexure XI(d) COPY OF THE NOTICE DATED 15/04/2016 2014-15 UNDER SECTION 67 :10: APPENDIX OF OT.APPEAL 18/2016 PETITIONER ANNEXURES Annexure 1 PHOTOCOPY OF RETURN FOR APRIL, 2015. Annexure II COPY OF ORDER NO. C3/34789/15/CT DATED 09.03.2016. Annexure III PHOTOCOPY OF ORDER DATED 19.05.2016 PASSED IN OTA NO. 7/2016. Annexure IV PHOTOCOPY OF TEST REPORT DATED 05.04.2016. :11: