

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES
(KARNATAKA), BANGALORE

- Present: YOGENDRA TRIPATHI, IAS,
Commissioner of Commercial Taxes.
- Sub: KVAT Act, 2003 - Section 59(4) - Issue of clarification on rate of tax on polyester sun control film falling under CET code 3920 6929 - reg.
- Read: (1) Letter dated 5.2.2011 of Sri R.V.Kali and Associates, STP for M/s.Gras Impex Pvt. Ltd., Bangalore
(2) Clarification order No.AR.CLR.CR.48/06-07, dated 7.11.2006 of the ACAR passed under Section 60 of the KVAT Act.
(3) Clarification order No.CLR.CR.141/09-10, dated 24.5.2010 passed under Section 59(4) of the KVAT Act.

PREAMBLE:

M/s.Gras Impex Pvt. Ltd is a dealer registered under the KVAT Act, 2003 with TIN 29500471351 and deals in polyester sun control film and other commodities. On its application seeking clarification on rate of tax on polyester sun control films under the KVAT Act, 2003, the Authority for Clarifications and Advance Rulings (ACAR) has vide its order dated 7.11.2006 clarified that the said commodity with CET code 3920 6929 falls under Sl. No.144 of notification No.FD 197 CSL 2005(6) dated 30.4.2005, reading as 'flexible plain films - laminated or metalized film - rigid or flexible' and hence liable to tax at 4%.

2: The undersigned in the case of another dealer, namely, M/s.Commercial and Technical (CATS), Bangalore has clarified the rate of tax under the KVAT Act on automotive window films to be at 12.5% up to 31.3.2010 and at 13.5% from 1.4.2010 vide order dated 24.5.2010. It is represented by the petitioner that M/s.Gras Impex Pvt Ltd that the Assistant Commissioner of Commercial Taxes (Enforcement)-6, South Zone, Bangalore has issued a notice under Section 79 of the

KVAT Act alleging fraudulent evasion of tax by the petitioner on the basis of clarification dated 24.5.2010 issued by the undersigned.

3. In this regard, the petitioner vide its letter dated 5.2.2011 has represented that it complied with the clarification issued by ACAR in its case on the commodity that is polyester sun control film and accordingly tax is being collected and paid at 4% / 5%. This clarification is not either withdrawn or modified and hence it still holds good and is binding on the petitioner. On the contrary, the clarification dated 24.5.2010 issued by the CCT related to another dealer and is not binding on the petitioner. The ACCT (Enforcement)-6, South Zone, Bangalore is therefore not correct in alleging fraudulent evasion of tax and proposing to take penal action under Section 79 of the Act. The petitioner has made a request to take necessary action and issue suitable instruction to the concerned officer so as to drop further proceedings in pursuance of notice issued by him under Section 79 of the KVAT Act.

4. The petitioner is heard in the matter. Sample of the commodity produced by the petitioner and other evidences filed by it such as purchase bill copies, copies of bill of entry are verified.

5. As seen from the copy of bill of entry, the commodity purchased by way of import is polyester sun control film with HSN code 3920 6929. ACAR has clarified that it falls under Sl. No.144 of the Table in the notification No.FD 197 CSL 2005 (6) dated 30.4.2005. The commodities mentioned in this notification are industrial inputs and packing materials for the purpose of entry 51 of Third Schedule to the KVAT Act, 2003. They are therefore liable to tax at 4% / 5%. Sl. No.144 in the said notification reads as under:-

Sl.No.	Central Excise Tariff Heading and Sub-heading No.	Description
1	2	3
144	3920, 3921.90.93,	Flexible plain films, laminated

