

**10. PROCEEDINGS OF THE COMMISSIONER,
COMMERCIAL TAXES, THIRUVANANTHAPURAM.**

Present:- Sri.Paul Antony.IAS

Sub:- KVAT Act 03-Clarification U/s. 94- Application filed by M/s. Kalyan Silks, M/s. Joy Allukas Traders(India) Pvt. Ltd ,and M/s Seematti, Ernakulam- Clarified orders issued- Reg:

Read (1) Application in Form No.24 dated Dt. 16.09.06 of M/s. Joy Alukkas Traders(India) Pvt. Ltd, Cochin

(2) Application in Form No. 24 Dt. 16.05.06 of M/s. Kalyan Silks, Thrissur.

(3) Application in Form No. 24 Dt. 26.05.06 of M/s Seematti, Ernakulam.

ORDER No.C7.22305/06/CT DT.03..02..2007

M/s. Joy Alukkas Traders(India) Pvt. Ltd, Cochin, M/s Kalyan Silks, Thrissur and M/s Seemati Ernakulam have filed separates applications read above under section 94 of KVAT Act 2003, seeking clarification on the following points.

- (i) Whether embroidered sarees are liable to tax under KVAT Act 03
- (ii) Whether weaving of design and pattern in the silk sarees are embroidery

Since common points are raised by all the parties the matters is clubbed and disposed off together.

The applicants were given opportunity of being heard. The authorized representatives of the applicants appeared and were heard. The contentions of the applicants were that embroidered sarees would not fall under entry.No. 40(3)(b) of 3rd schedule to KVAT Act,2003 but under entry 51 of the 1st schedule to the said Act. It was further contented that sarees of silk/cotton/synthetic etc are classified under chapter 50, 52, 54 or 55 of Customs Tariff Act 1975.

The contentions put forth have been examined with reference to the statutory provisions. Undisputably sarees are woven fabrics. The question to be answered is whether embroidered sarees qualify for clarification for the purpose of taxation, under entry 51 of the 1st schedule to the KVATA Act, 2003 which inter alia includes articles coming under chapter 52, 54 and 55 of Customs Tariff Act 1975 which deals with textile fabrics.

But chapter 58 of the Customs Tariff Act 1975 deals with special woven fabrics, tufted textile fabrics, lace, and embroidery.

Going by the definition of the term 'embroidery' is the art or handicraft of decorating fabric or other materials with designs stitched in strands of thread or yarn using a needle. Embroidery may also incorporate other materials such as metal strips, pearls, beads, quills, and sequins. Machine embroidery is created by using a specialized machine that can read a computerized design to automatically create a stitched design.

When embroidery is done on a woven fabric, it naturally acquires the quality of an embroidered article with distinct identity, which is different from article under chapters 52, 54 and 55 of Customs Tariff Act 1975 which deals with ordinary woven fabrics. Chapter 58 above deals with special woven fabrics, tufted textile fabrics, lace, embroidery etc. Those materials, whether sari or not, in which embroidery is carried out are embroidered articles and so would be classifiable under chapter 58 of Customs Tariff Act 1975, for the purpose of taxation.

All embroidered textiles materials falling under chapter 58 of Customs Tariff Act 1975, have been classified under entry 40 of 3rd schedule to KVAT Act 2003 taxable at 4% and so embroidered sarees would fall under the said entry

But as per the amendments made in the KVAT Act, 2003 by Kerala Finance Act, 2006 (22 of 2006) entry 40 of 3rd

schedule to KVAT Act 2003 has been omitted and the items covered under the said entry has been brought in the 1st schedule of the said Act as entry '17A.'with effect from 01/07/2006.

The statutory positions being so, embroidered sarees would be a taxable commodity up to 30/6/2006 under KVAT Act 2003.

The other issue raised 'whether weaving of design and pattern in silk sarees are embroidery' will not come under the ambit of section 94 of KVAT Act 2003, and so cannot be answered.

The issues raised are clarified accordingly

Commissioner.