

**GIB/KR/N.V.K/16.10.2018/HC-141**

**High Court Category :** Classification

**State :** Kerala

**Order No.:** GIB/KR/N.V.K/16.10.2018/HC-141

**Name of Entry :**

N V K Mohammed Sulthan Rawther And Sons

**Date :** 16-10-2018

**Breif Issue :**

**Issue And Fact Of The Case -**

N V K Mohammed Sulthan Rawther And Sons the, ("first petitioner") is a manufacturer of "Ground Betel Nuts (Arecanuts) with the registered brand name "Roja". The first petitioner consigned a load of Roja betel nut to Roja Agencies ("the second petitioner"), through the Exhibit P9 tax invoice dated 22.09.2018, under HSN 0802 with 5% rate of tax.

The Assistant State Tax Officer (ASTO), intercepted the lorry and detained the goods, alleging that the first petitioner's product fits the description "HSN 2106" and attracts 18% tax-not 5%. In other words, the ASTO detained the goods because the petitioners had allegedly been trying to evade tax by misdescribing the product. Therefore, the aggrieved, the petitioners filed a Writ petition

**Decision of Advance Ruling Authority :**

**Decision -**

It was held that the classification or the alleged misbranding of the product even the alleged tax variation, not evasion though cannot be considered here, the first petitioner declared the HSN Code he has felt his product would attract and paid the tax accordingly. The returns are very much on record before the assessing officer, Therefore, to that extent the first petitioner's conduct cannot be faulted, nor can he be accused of evading the tax at best the inspecting authority can alert the assessing authority to initiate the proceedings "for assessment of any alleged sale, at which the petitioner will have all his opportunities to put forward his pleas on law and on fact" and the order of detention is arbitrary and unsustainable, same is set aside and the Assistant State Tax Officer is directed to release the goods."