

PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
UNDER SECTION 94 OF THE KERALA VALUE ADDED TAX ACT, 2003
DEPARTMENT OF COMMERCIAL TAXES, KERALA.

Members present are:

B.S Thyagarajababu,
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

A. Nazurudeen,
Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

M.I. Mansur,
Deputy Commissioner (Internal Audit),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram

Sub:- KVAT Act, 2003 – Clarification U/s 94 – Application put in by M/s. Kays Enterprises, Palakkad – Orders issued- reg.

Read:- 1.Application dated 26-07-2009 by M/s. Kays Enterprises, Palakkad.
2. Additional submission dtd.02-11-2011.
3. Final Hearing Dt.04-10-2018.

ORDER No.C3/31604/2009/CT DATED 27-03-2019

M/s Kays Enterprises, Palakkad is a distributor of products manufactured by M/s.Vicco Laboratories. They have requested to clarify whether the following products are falling under Entry 36 of the Third Schedule.

Vicco Vajradanti (Paste Foam)
Vicco Vajradanti Strong
Vicco Vajradanti SF (Sugar Free)
Vicco Turmeric Skin Cream
Vicco Turmeric-S Skin Cream (Foam Base)
Vicco Turmeric WSO - Skin Cream
Vicco Turmeric Skin Cream (in Oil base)
Vicco Narayani.

The authorized representative of petitioner was heard and it is stated that the Vicco products are manufactured under the Ayurvedic license and not under the Cosmetic license. It is a punishable offense to manufacture cosmetics under a license issued to manufacturing

ayurvedic medicines. It is also pointed out that the Hon'ble Supreme Court has finding that Vicco products are Ayurvedic medicines. Accordingly, the Vicco products are ayurvedic medicines and taxable at 4% under HSN 3004 which falls under Entry 36 of the Third Schedule to the Kerala Value Added Tax Act, 2003. Foods and Drugs Administration, Nagpur has certified that Vicco Products are Ayurvedic Medicaments which contains ingredients which are exclusively in accordance with formulae described in authoritative text books viz. Bhav Prakash, Nighant Ratnakar and Charaka Samhita. The applicant has further contended that the ingredients used in Vicco products have prophylactic and therapeutic values/ properties and they specifically cure different diseases. The Vicco products are manufactured, packed, sold displayed and advertised as ayurvedic medicines. The words Ayurvedic Medicines are prominently printed on the packing material.

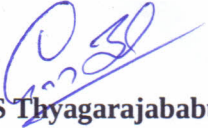
The matter was examined in detail. As per Order No.C3-7789/08/CT dtd.21-04-2008, it is clarified that "Vicco turmeric cream is taxable @ 12.5% by virtue of 103 of SRO.No.82/2006. As per Order No.C3-3230/08/CT dtd.12-11-2009, it is clarified that Sona Fairness Cream, Kaveri fairness cream, Baby fairness oil etc. are cosmetics even though they are manufactured with a drug license. The function and purpose of these products are to sooth the skin from minor blemishes and irritants and are mainly concerned with improving the appearance of the skin and thus only subsidiary curative or pro-prophylactic value. Hence they are classified under Entry 25 of SRO.No.82/2006.

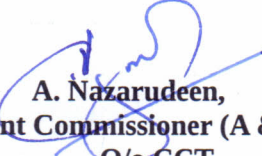
Ministry of Health and Welfare (Ayush) on 01/04/2008 certified that Vicco products are 100% ayurvedic medicines. Central Board of Excise and Customs has also viewed that the Vicco Vajradanti and Vicco Turmeric cream manufactured by Vicco Laboratories are ayurvedic medicines.


As per Kerala Finance Act, 2012, "*Ayurvedic cosmetics containing added medicaments and manufactured under drug license granted under the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940)*" are specifically brought under 3rd Schedule to VAT Act as Sl.No.36 (27). Subsequently, as per Kerala Finance Act, 2014, retrospective effect was given to this amendment w.e.f. 13-11-2009 subject to condition that tax if any, collected during the period shall not be refunded.

For the above explained reasons, the products like Vicco Vajradanti (Paste Foam), Vicco Vajradanti Strong, Vicco Vajradanti SF (Sugar Free), Vicco Turmeric Skin Cream, Vicco Turmeric-S Skin Cream (Foam Base), Vicco Turmeric WSO - Skin Cream, Vicco Turmeric Skin Cream (in Oil base) and Vicco Narayani are taxable at the rate of 4% / 5% as per Sl.No.36(27) of Third Schedule of KVAT Act.

The issues raised above are clarified accordingly.


B.S. Thyagarajababu,
Joint Commissioner (General),
O/o CCT


A. Nazarudeen,
Joint Commissioner (A & I),
O/o CCT


M.I. Mansur,
Deputy Commissioner
(Internal Audit), O/o CCT

To

M/s.Kays Enterprises,
V/28, Ganapthy Temple Street,
East Peruvaba,
Palakkad-678531.