

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. T.K. Ziavudeen.
Joint Commissioner (A&I),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. Dr. A. Bijikumari Amma.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Rate of tax of certain
ayurvedic products – Orders issued.

Read : 1. Application from M/s. Vishal Personal Care Private Ltd.,
Hyderabad dtd. 5/8/2015.
2. Judgment of the Hon'ble High Court of Kerala in WP(C) No. 987
of 2016(W) dtd. 15/1/2016.

ORDER No.C3/28127/15/CT DATED 15/4/2016.

1. M/s. Vishal Personal Care Private Ltd., Hyderabad has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of 218 Nos. of commodities including face packs, face washes, gels etc.

2. The Hon'ble High Court of Kerala vide it's judgment read as paper 2nd above has directed to consider and pass orders on the application, after hearing the petitioner.

3. The applicant is a company incorporated under the provisions of the Companies Act 1956 and is having its Registered Office in Hyderabad, Telangana. The applicant is engaged in the manufacture and sale of ayurvedic products. The applicant has been granted a License to Manufacture for Sale of Ayurveda/Siddha/Unani Drugs vide license No. T-2037/AYUR issued in Form 25-D under Rule 154 of the Rules by the Department of Ayush, Government of Andhra Pradesh. The applicant is selling their products, to which the above license and certificates pertain to, within the State of Kerala. To this extent, the Company through its dealer, M/s. Geco Agencies is selling its products to consumers within the State of Kerala. Towards the sale of these goods to the consumers in Kerala, the dealer is presently discharging VAT at the rate of 14.5%. However these

products being ayurvedic products, the manufacture of which is being undertaken under the license issued under the Drugs and Cosmetics Act, 1940, the applicant is of the view that VAT is to be discharged at 5% as per Entry No. 36(27) of the Third Schedule to the Kerala Value Added Tax Act.

4. The applicant has requested to clarify the rate of tax of each of the 218 items listed in the application. The applicant has also requested to clarify as to whether ayurvedic products which will be sold by the applicant through the dealer will be liable to VAT at 5% from the date of obtaining the license from the Department of AYUSH or will the product be liable to VAT at 5% prior to obtaining the license also.

5. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

6. The Kerala Value Added Tax Act Schedule Entries to be examined in this regard are Entry 36(7)(e)(i) and Entry 36(27) of the Third Schedule. Medicaments of Ayurvedic Systems are classified under the HSN 3003.90.11 which appears in Entry 36(7)(e)(i) of the Third Schedule to the Act which reads:

36 *Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani and Homeopathic medicine but excluding mosquito repellants and those specifically mentioned in the First Schedule.*

(7) *Medicaments (excluding good of HSN headings Nos.3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale*

(e) *Other*

(i)	<i>Medicaments of Ayurvedic system</i>	<i>3003.90.11</i>
(ii)	<i>Medicaments of Unani system</i>	<i>3003.90.12</i>
(iii)	<i>Medicaments of Siddha</i>	<i>3003.90.13</i>
(iv)	<i>Medicaments of Homoeopathic system</i>	<i>3003.90.14</i>
(v)	<i>Medicaments of Bio-chemic system</i>	<i>3003.90.15</i>
(vi)	<i>Medicaments other than those given in sub-entries (I) to (v)</i>	<i>3003.90</i>

As per the Rules of Interpretation of Schedules, *‘those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act. Those commodities, which are not given with HSN Number, should be interpreted, as the case may be, in common parlance or commercial parlance. While interpreting a commodity, if any inconsistency is observed between the meaning of a commodity without HSN Number and the meaning of a commodity with HSN Number, the commodity should be interpreted by including it in that entry which is having the HSN Number.*

7. Note 1(d) and (e) of Chapter 30 of the Customs Tariff Act viz. Pharmaceutical products, reads:

1. This Chapter does not cover:

- (d) preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties;
 (e) soap or other products of heading 3401 containing added medicaments;

The Customs Tariff Act Item 3401 reads as follows:

3401		SOAP; ORGANIC SURFACE-ACTIVE PRODUCTS AND PREPARATIONS FOR USE AS SOAP, IN THE FORM OF BARS, CAKES, MOULDED PIECES OR SHAPES, WHETHER OR NOT CONTAINING SOAP; ORGANIC SURFACE-ACTIVE PRODUCTS AND FOR WASHING THE SKIN, IN THE FORM OF LIQUID OR CREAM AND PUT UP FOR RETAIL SALE, WHETHER OR NOT CONTAINING SOAP; PAPER, WADDING, FELT AND NONWOVENS, IMPREGNATED, COATED OR COVERED WITH SOAP OR DETERGENT
		<i>- Soap and organic surface-active products and preparations, in the form of bars, cakes, moulded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent :</i>
3401 11	--	<i>For toilet use (including medicated products):</i>
3401 11 10	---	<i>Medicated toilet soaps</i>
3401 11 20	---	<i>Shaving soaps other than shaving cream</i>
3401 11 90	---	<i>Other</i>
3401 19	--	<i>Other:</i>
	---	<i>Bars and blocks of not less than 500 gm in weight:</i>
3401 19 11	----	<i>Industrial soap</i>
3401 19 19	----	<i>Other</i>
3401 19 20	---	<i>Flakes, chips and powder</i>
3401 19 30	---	<i>Tablets and cakes</i>
	---	<i>Household and laundry soaps not elsewhere specified or included :</i>
3401 19 41	----	<i>Household soaps</i>
3401 19 42	----	<i>Laundry soaps</i>
3401 19 90	---	<i>Other</i>
3401 20 00	-	<i>Soap in other forms</i>
3401 30	-	<i>Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap :</i>
	---	<i>For toilet use (including medicated products):</i>
3401 30 11	----	<i>Medicated toilet soaps</i>
3401 30 12	----	<i>Shaving cream and shaving gel</i>
3401 30 19	----	<i>Other</i>
3401 30 90	---	<i>Other</i>

Hence, medicated soaps and other preparations for washing the skin in the form of liquid or cream falling under the HSN 3401 even if they have therapeutic properties or prophylactic properties cannot be included in Chapter 30 viz. Pharmaceutical Products. As such, going by the Rules of Interpretation appended to the Kerala Value Added Tax Act and the Notes of Chapter 30 of the Customs Tariff Act, the applicant's products like gels and face washes cannot be included in the HSN Code 3003 or 3004 appearing in Entry 36(7) and 36(8) of the Third Schedule.

8. The four digit HSN 3401 does not appear in any of the Schedules to the Kerala Value Added Tax Act, 2003.

9. Entry 36(27) of the Third Schedule to the Kerala Value Added Tax Act, 2003 as relevant to the context is extracted hereunder:

- 36** ***Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani and Homeopathic medicine but excluding mosquito repellants and those specifically mentioned in the First Schedule.***

27 Ayurvedic cosmetics containing added medicaments and manufactured under drug license granted under the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940)

But item VI. 23 of the Rules of Interpretation of Schedules appended to the Act specifically states that *Entry 36 in Third Schedule does not include food or beverages such as dietetic, diabetic or fortified foods, food supplements, tonic beverages, aqueous distillates or aqueous solutions of essential oils suitable for medicinal use, soaps or other products containing added medicaments, and blood albumin not prepared for therapeutic or prophylactic uses.*

10. As such, going by the Rules of Interpretation of Schedules appended to the Kerala Value Added Tax Act, 2003 and the Item VI.23 in particular, it can safely be concluded that the Legislature never intended to include **soaps or other products containing added medicaments** in **Entry 36 in Third Schedule**. The scope of the Item VI.23 is not limited to any specific sub-entry viz Entry 36(7) or Entry 36(27); but is applicable to all the sub-entries of Entry 36 of the Third Schedule. Further **preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties** are excluded from Chapter 30 of the Customs Tariff Act.

11. Hence, it is hereby clarified that the applicant's products falling under the category of gels, face-washes etc. would be taxable at the rate of 14.5% by virtue of Entry 27(2)(b) of S.R.O. No. 82/2006 and other products would be taxable at the rate of 5% by virtue of Entry 36(27) of the Third Schedule to the Kerala Value Added Tax Act, 2003.

The issues raised above are clarified accordingly.

T.K. Ziavudeen
Joint Commissioner (A&I)

Dr. A. Bijikumari Amma
Joint Commissioner (Law)

V.J. Gopakumar
Deputy Commissioner (General)

To

Sri. Jose Jacob,
Advocate,
M/s. JRS Associates,
No. 41/3787, 1st Floor,
Carmel Centre, Banerji Road,
Kochi – 682 018.