

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 (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

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

3. N. Thulaseedharan Pillai.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 – Clarification U/s 94 – Rate of tax on Kezrin Soap -
Orders issued.

Read:- Application dtd. 27-07-16 from M/s. Rhine Biogenics Pvt. Ltd.,
Palakkad

ORDER No.CT/4337/2016-C3 DATED 04/07/2017

1. M/s. Rhine Biogenics Pvt. Ltd., Palakkad has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to rate of tax on Kezrin soap.

2. The applicant is a pharmaceutical company engaged in trading of medicines and non-medicines on the rolls of the Assistant Commissioner, Special Circle, Palakkad.

3. The applicant would submit that 'Kezrin Soap' contains the medicine Ketaconazole-2% which is manufactured as per Indian Pharmacopeia and can be sold only on medical prescription of a Registered Medicinal Practitioner. Kezrin Soap contains a blend of vegetables and mineral tars often found effective in Eczema, Psoriasis and seborrhea. The product Ketaconazole-2% comes within the scope of Pharmaceutical products falling under entry 3004 of Central Excise Tariff Act and Entry 36 of the Third schedule to the KVAT Act taxable at the rate of 5%. Accordingly, the applicant is selling the same collecting tax at 5% on MRP and is raising invoice in Form 8H as other medicine.

4. The applicant would further submit that the product is manufactured by M/s. BCL Pharma, Himachal Pradesh in accordance with the norms of Drugs and

Cosmetics Act, 1940. The applicant has produced copies of Drug License obtained by M/s. BCL Pharma in Form 25 and declaration by M/s. BCL Pharma asserting the product is to be treated as a medicament. Even though the product is in the mode of soap, it is a medicine recommended by Doctors to cure fungal skin infections and cannot be used as common bath soap. A **warning** that the product can be sold **only** on the prescription of a Medical Practitioner is printed in the carton. The product is billed only to those dealers having valid drug license and can only be sold through medical shops.

5. The applicant placed his reliance on the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Hyderabad vs. M/s. Sarvotham Care Ltd.** wherein the Apex Court classified 'Ketaconazole Shampoo' containing 2% Ketaconazole as a medicament.

6. The applicant has referred to the decision of High Court of Gauhati in **Emami Ltd. and another vs. State of Assam and another**, wherein it has been held as under:

"We have also found that when a product in common parlance and on user perception is found to be a drug, the same needs to be concluded as drug although it can be used in ancillary measure as cosmetic product as well. The decisions referred to above make such position clear.

Coming back to our case, we have found that products which are involved in the proceedings before us are basically treated as drugs and medicines although they have ancillary use as cosmetics and toilet products, and as such, the respondent authorities herein were not right in treating those articles as cosmetics and toilet products for the purpose of levy of tax at 12.5% in terms of entry No. 1 of the Fifth schedule to the Act of 2003. Rather, tax on those products was to be levied at per cent in terms of entry No. 21 of the Fourth Schedule to the aforesaid Act."

In the result, the notification / letters / orders classification in so far they relate to the impugned goods, so specified in the writ petitions aforesaid are hereby quashed and set aside."

7. The applicant further referred to the definition of the words "cosmetic" and "drug" as defined in the Drugs and Cosmetics Act, 1940, which was considered by the Apex Court while arriving at the aforementioned judgment.

A 'cosmetic' means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance and includes any article intended for use as a component of cosmetic.

A 'drug' includes all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animal including preparations applied on human body for the purpose of repelling insects.

8. The applicant argued that the product in question, 'kezrin soap' is not intended for cleansing, beautifying, promoting attractiveness or altering the

appearance. On the other hand it is intended to cure certain diseases as mentioned supra.

9. The applicant has requested to clarify the rate of tax of the above commodity.

10. The applicant was heard in the matter and the contentions raised were examined.

11. The request of the applicant is to clarify the rate of tax of 'Kezrin soap'. 'Kezrin' is, undoubtedly, a medicated soap. The Kerala Value Added Tax Act Schedule Entries to be examined in this regard are Entry 36 (8) and Entry 36 (27).

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

<i>(8) Medicaments (excluding goods of HSN heading nos. 3002, 3005, or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale</i>	
<i>(a) containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives</i>	3004.10
<i>(b) containing other antibiotics: cephalosporins and their derivatives</i>	3004.20
<i>(c) containing hormones or other products of HSN heading No. 2937 but not containing antibiotics other than insulin injection</i>	3004.31
<i>(d) containing corticosteroid hormones, their derivatives and structural analogues</i>	3004.32.00
<i>(e) Pituitary hormones; prednisolone; dexamethasone; danazol; other progestogen and oestrogen group hormones</i>	3004.39
<i>(f) containing alkaloids or derivatives thereof but not containing hormones, other products of HSN heading No. 2937 or antibiotics</i>	3004.40
<i>(g) Other medicaments containing vitamins or other products of HSN heading No.2936</i>	3004.50
<i>(h) Other</i>	
<i>(i) Medicaments of Ayurvedic system</i>	3004.90.11
<i>(ii) Medicaments of Unani system</i>	3004.90.12
<i>(iii) Medicaments of Siddha</i>	3004.90.13
<i>(iv) Medicaments of Homoeopathic system</i>	3004.90.14
<i>(v) Medicaments of Bio-chemic system</i>	3004.90.15
<i>(vi) Medicaments other than those given in sub-entries (i) to (v)</i>	3004.90

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

12. But, notes 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;

Moreover, item vi(23) of the Rules of interpretation specifically state 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.

13. 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 PREPARATIONS 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

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 :

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 -- Other
3401 30 90 -- Other

The corresponding entry in the Kerala Value Added Tax Act is Entry 27(1)(a) of the SRO No. 82/2006 which reads as under:

27 Detergents whether cake, liquid or powder, toilet soap, washing soap, laundry brighteners, abir, blue, stain busters, stain removers and all kinds of cleaning powder and liquids including floor and toilet cleaning whether medicated or not

(1) Soap and organic surface active products and preparations in the form of bars, cakes, moulded pieces of shapes and paper, wadding, felt and non wovens, impregnated, coated or covered with soap or detergents

(a) Medicated toilet soap

3401.11.10

From the above, it is clear that 'medicated toilet soap' is covered under Entry 27(1)(a) of the SRO No. 82/2006, bearing HSN Code 3401.11.10.

14. In the light of the above, it is hereby clarified that the commodity 'Kezrin soap' would come under the entry 27(1)(a) of the SRO No. 82/2006 and would be taxable @ 14.5%.

The issues raised above are clarified accordingly.

T.K. Ziaudeen
Joint Commissioner (Law)
(General)
O/o CCT

Dr. A. Bijikumari Amma
Joint Commissioner (A&I)
O/o CCT

N. Thulaseedharan Pillai
Joint Commissioner
O/o CCT

To

CA B.Mohan,
Chartered Accountant,
M/s. K. Venkatachalam Aiyer & Co.,
Chartered Accountants, Vipinam,
Door No. 15/251 (17), Sivankovil Street,
Tharakkad Village, Palakkad – 678 001