

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 of the commodities ‘Anna vita’ and ‘Anna tone’ – Orders issued.

Read:-1. Application dtd. 21.03.11 from Dr. K.K.Babu, proprietor of Anna Ayurvedics, Punalur
2. Judgment of the Hon’ble High Court in OTA No. 3 of 2012, dtd. 11/07/2016
3. Clarification Order No.C3/10252/11/CT dtd. 23.12.2011.

ORDER No.CT/15679/17-C3 DATED 29/06/2018

1. Dr. K.K.Babu, proprietor of M/s. Anna Ayurvedics, Punalur had preferred an application read 1st paper above seeking clarification on the rate of tax of the commodities ‘Anna Vita’ and ‘Anna Tone’. After considering all the contentions raised by the applicant, the Authority came to a conclusion that the commodities Anna Vita and Anna Tone cannot be classified under Entry 36 of the Third Schedule to the KVAT Act and as no other Entry in any of the schedules is suitable for incorporating the said commodities, it was clarified that the said commodities would be taxable at the rate of 12.5% vide Entry 103 of SRO No. 82/2006. The operative portion of the said clarification is extracted below:-

“a. Possession of a valid drug licence under the Drugs and Cosmetics Act. Just for the fact of manufacture of an item under license under the Drugs and Cosmetics Act, it cannot be termed as medicament, and it cannot be solely relied upon to clarify that the item is a medicine.

b. Whether its prophylactic and therapeutic properties are only incidental or not is a question to be looked into. The applicant presents that the products Anna Vita and Anna Tone are based on authoritative Ayurvedic texts. From the contentions it is understood that they are used for the general well being of the body. The applicant failed to prove concrete medical uses aimed at curing any particular ailment with specific symptoms. Hence these products are having subsidiary medical and prophylactic use only.

c. The ingredients are mentioned in Ayurvedic texts. But it is not clear that the resultant combination is aimed at any specific ailment.

d. Mode of presentation of the product to the market is another criteria to be looked into. In

Naturalle Health Products (P) Ltd Vs. Collector of Central Excise, Hyderabad, 2003 (158) ELT 25 (SC), it was held that ayurvedic medicines not having been defined in the Central Excise Tariff Act 1985, the common parlance test would have to be resorted to find out whether a medicine is treated as an ayurvedic medicine by public. The applicant's claim in this matter deserves to be applied with common parlance test. Definitely the common man identify the products Anna Vita and Anna Tone as general health supplements only. The applicant has not presented any evidence to prove otherwise. Advertisements in print and visual media about these products also create an impression that of health supplements. In common parlance, the customers purchase these products to improve their general health and it is impractical to see that ailing patients go for this products for cure. Sick patients go for prescribed medicines aimed at particular symptoms and ailment.

e. Whether it is prescribed by a doctor is a matter of fact to be proved and applicant has not provided any evidence to support the claim.

10. Even though the above said products have therapeutic qualities, that is not enough to qualify the products as Ayurvedic medicine for the purpose of Kerala Value Added Tax Act, 2003. In view of the guideline 23 of the Rules of Interpretation of Schedules appended to the Act, there clearly exists a category of products which may be granted Drug licence based on certain subsidiary pharmaceutical or subsidiary curative or prophylactic value which however cannot be classified under Entry 36 in the Third Schedule despite having Drug licence."

2. Aggrieved by the order, M/s. Anna Ayurvedics preferred OTA No. 3 of 2012 before the Hon'ble High Court of Kerala. The Hon'ble Court, vide its judgment read 2nd paper above, set aside the clarification order read 3rd paper above and remitted the matter to the authority for fresh consideration, requiring the competent authority to reconsider the matter as indicated by the Apex Court in its judgment in Civil Appeal No. 6988/03 dtd. 14.08.2013.

3. As per the direction of the Hon'ble High Court, the applicant was again given an opportunity for hearing on 22.11.2017.

4. The applicant has argued that the products 'Anna Vita Lehyam' and 'Anna Tone Lehyam' are ayurvedic medicines taxable at 4% falling under entry 36(7)(e)(i) of the third schedule with HSN code 3003.90.11.

36	Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani and Homoeopathic medicine but excluding mosquito repellants and those specifically mentioned in First schedule	
(e)	Other	
	(i) Medicaments of Ayurvedic system	3003.90.11

5. The applicant relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 6988 of 2003 dtd. 14.08.13 Commissioner of Central Excise, Mumbai vs. M.s, Cliens Laboratories. The said judgment has laid down the guiding principles to decide whether product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties.

6. The applicant has argued that he had submitted the proof to show the medicinal ingredients which are used for making the product and the specific curative property of the alkaloids present in the plants as well as the diseases the product sought to cure. It has been proved with certificates issued by Ayurveda doctors that the products 'anna vita' and 'anna tone' are medicaments to prevent or control uterine complaints especially leucorrhea, menorrhagia, polymenorrhoea, metrorrhagia, menometrorrhagia etc. The product especially cures ante/post natal illness in females. The applicant argued that even though the ingredients are mentioned in the ayurvedic text, the authority, in earlier

clarification, went on to hold that it is not clear that the resultant combination is aimed at any specific ailment.

7. The applicant further argued that going by the ingredients of the two products referred to herein and the curative and medicinal properties contained in the products and evidenced by the certificates issued by the ayurvedic department and licensing authority, the product in question would be considered as medicinal product having therapeutic or prophylactic or curative properties which is the criteria fixed by the Hon'ble Apex Court in classifying the product. Going by the above finding, the applicant's products should be classified as ayurvedic products which are taxable at the rate of 4% and not falling under residuary entry contained in entry 103 of SRO 82/06.

8. The applicant further, vide letter dtd. 09.01.18, submitted a copy of the information received from the Health Department through RTI in order to prove that the said products are not health supplements but ayurvedic medicines. He has also produced copy of the advertisement of the above products and has stated that the patients use these products only as per the direction of the doctor (ie., the applicant himself, Dr. K.K.Babu).

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

10. The contentions raised by the applicant have been verified in the light of the above judgment of the Hon'ble Supreme Court. In that judgment, the Supreme Court has summarised the governing principles in para 19 of the judgment, which reads as follows:


19. Thus, the following guiding principles emerge from the above discussion. Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. What is of importance is the curative attributes of such ingredients that render the product a medicament and not a cosmetic. Secondly, though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over/across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments. Thirdly, prior to adjudicating upon whether a product is a medicament or not, Courts have to see what the people who actually use the product understand the product to be. If a product's primary function is "care" and not "cure", it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament.

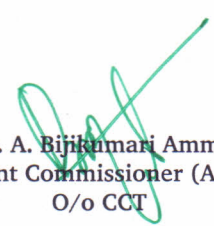
11. By the applicant's own admission, the products, 'Anna vita' and 'Anna Tone' are used to promote the general health of men and women. Even though the said products may have a subsidiary curative or prophylactic value, they are not used mainly for curing or treating any specific ailment or disease. In this context, Guidelines 23 of the Rules of

Interpretation of Schedules may be noted. As per this Guideline, Entry 36 of the 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.

12. In the light of the above, the products in question cannot be branded as 'drugs' or 'medicaments', falling under entry 36 of the third schedule. They would instead come under Entry 97 of SRO No. 82/2006, and would, therefore be taxable @ 12.5% / 13.5% / 14.5%.

The issues raised above are clarified accordingly.


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


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


N. Thulaseedharan Pillai
Joint Commissioner (General)
O/o CCT

To

Dr. K.K.Babu,
Proprietor M/s. Anna Ayurvedics,
Ayiranalloor.P.O., Edamon, Punalur

