

6. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL  
TAXES THIRUVANANTHAPURAM

Present:- Paul Antony. IAS

Sub:- KVAT Act 2003- Clarification U/s. 94- Payment of tax  
U/s. 8- Reg:

Read:- Application putin by M/s. Johnson & Johnson Ltd,  
Kalamassery, Ernakulam

ORDER No.C3.35160/07/CT Dt. 14/01/08

M/s. Johnson & Johnson Ltd, Kalamassery, Ernakulam are manufacturers of Health care products. They have pharma division as well as non pharma divisions. The pharma division is paying tax at MRP in respect of the items coming under the chapter 30, where as other divisions are paying tax U/s. 6 even for drugs and medicines coming under chapter 30. They are paying tax at MRP since April 2005. But the statutory requirement of filing formal option has not been complied with. The audit assessment wing has issued a notice requiring payment of tax on the entire turnover.

In the above circumstances the applicant seeks clarification on the following points.

- i). Whether there has been an option to remit tax U/s. 8.
- ii) Whether the applicant should pay tax U/s. 8(e) where the applicant and subsequent dealers have met tax U/s. 6 on certain lines of pharma division.
- iii) in the absence of option U/s. 8, are the products of pharma division on which tax on MRP has been remitted liable to tax in the hands of subsequent dealers.
- iv). Whether it is possible for the pharma division to take separate registration U/s. 20(3).

The applicant was given an opportunity of being heard and contentions raised were examined in detail.

Out of points raised as above, point (i) and (iv) are not entertainable U/s. 94 of KVAT Act.

As regards other point, eventhough the dealer had not filed compounding option in Form 1D, he was collecting and

paying tax on MRP in respect of the pharma division to which he is otherwise entitled. The voluntary filing of returns conceding the tax U/s. 8(e) along with tax payments and its consequential acceptance U/s. 21 (ie. self assessment) makes the intention of the assessee to pay tax U/s. 8(e) clear. The non-rejection of such returns by the department shows the acceptance of this constructive offer made by the assessee to pay tax U/s. 8(e). Thus there is an implied option and its acceptance and so neither the applicant nor the department can go back from the option of compounding, a point which has been judicially settled [(2004) 12 KTR 543 Kerala, Jyothish kumar Vs State of Kerala etc].

A dealer paying tax U/s. 8(e) is not permitted to limit the option to any category, which means that he has to pay tax U/s. 8(e) on all products dealt by him which are liable U/s. 8(e). So if the applicant firm had omitted any category of Drugs & Medicines coming under entry 36 of 3<sup>rd</sup> schedule from the purview of section 8(e), he would necessarily have to pay tax on MRP on such items.

As regards point (iii), a dealer paying tax U/s. 8(e) have to issue invoice/bills in Form 8H and the subsequent dealers are entitled to recover the tax paid on purchase from the customers. For the mere reason that formal option has not been filed by the applicant dealer in the given set of circumstances the subsequent dealers would not be liable to pay VAT U/s. 6, provided the purchase is covered under invoice/bills in Form 8H.

The issues raised are clarified accordingly.

Commissioner.