

**18. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPURAM**

Present:- Paul Antony. IAS

Sub:- KVAT Act 2003- Clarification U/s. 94- rate of tax – Vicks,
Chyavanaprasam, Vicco Cream, Revive (Starch) & Alive (Starch) Reg:

Read:- Application put in by Geofrin Pettah, Margin Free Super
Stockist, A.K.G.Road, Edappally.

ORDER No.C3.7789/08/CT DT.21..04..08

M/s. Geofrin, Pettah, Margin Free Super Stockist, A.K.G.Road,
Edappally, has preferred an application U/s 94 of KVAT Act 2003-
seeking clarification on the following points.

1. The rate of tax applicable during 2005-06 on the sales turnover of Vicks, Dabour Chavanaprasam, Vicco Cream, Reviva (starch) & Alive (starch).
2. Whether it is fair to raise the dispute regarding rate of tax with the subsequent dealers as the whole sale first seller is available for dispute settlement.
3. Whether input tax claim of the subsequent VAT Dealer can be revised if a higher rate of tax is paid to the Government by the VAT Dealer, who sold the goods to him.
4. Whether it is necessary to revise the return of the purchasing dealer to claim higher rate of input tax in consequence of payment of higher rate of tax by his seller.

The applicant was given an opportunity of being heard. The issue raised was examined in detail.

Rate of tax of Vicks (All types):- The applicant has sought to clarify the rate of tax of “Vicks” brand confectionary and Balms. The applicant contends that there are medicines included in the entry 36 of the 3rd schedule of the KVAT Act. No other supporting arguments or documents are put forward by the petitioner. While it could be said that Vicks tablets and Balm may contain certain added medicaments, in common parlance it is not treated as a medicine as appearing in Entry 36 of 3rd schedule. These items are sold over the counter in almost all retail shops and are available freely. Also, clause 23 to the Rules of Interpretation appended to the statute clearly differentiates these items against classification under entry 36 of 3rd schedule. In the circumstances vicks tablets are confectionary falling under entry 24(1) of SRO 82/06 and hence taxable @ 12.5% and Vicks balm is taxable @ 12.5% vide entry 103 of SRO 82/06.

Chyavanaprasam is an Ayurvedic proprietary medicine mentioned in the Ayurvedic tests enumerated under Schedule 1 of the Drugs and Cosmetic Act and hence would fall under the HSN 3003.90.11, entry 36 of Schedule III to KVAT Act, and hence will be taxable @ 4%.

Vicco Turmeric Cream:- The contention of the applicant is that these creams would fall under, entry 36 of 3rd schedule under Medicaments of Ayurvedic system with HSN 3004.90.11. In support of their contention they have produced copies of orders of TA 268 and 269 of 2000 wherein it was found that Vicco Vajradanti paste and powder would fall under entry 79 of the 1st schedule of KGST Act, “Medicine and Drugs including Allopathic, Ayurvedic, Homeopathic Siddha and Unani preparations and Glucose I.P.”. This followed the decision of the Supreme Court in “United Trading Agency Vs Addl. Commissioner of Commercial Taxes, Bangalore 182 STC (104)”.

But KVAT adopts an HSN based classification. Accordingly Medicaments of Ayurvedic System HSN 3004.90.11 falls under entry 36 of schedule III of KVAT Act and hence it is taxable @ 4 %. The question to be considered is whether “Vicco turmeric Ayurvedic cream” falls under this entry. Admittedly Vicco turmeric ayurvedic cream is a beauty and makeup preparation for skincare. Such creams and Turmeric preparations (Other than medicaments) are classified under HSN 3304.99.10 and 3304.99.50 of the HSN adopted by Customs Tariff Act.

As per clause 23 to the rules of interpretation appended to the KVAT Act “Entry 36 of 3rd schedule does not include food or beverages such as dietic, diabetic or fortified foods, food supplements, tonic beverages, aqueous distillates, aqueous solution of essential oils suitable for medicinal use, soaps and other products containing added medicaments, and blood and albumin not prepared for therapeutic and prophylactic uses.

Notes (19) to Customs Tariff Act chapter 30, which includes HSN 3004.90.11 states Chapter 30 does not cover preparations of HSN 3303 to 3307 even if they have therapeutic or prophylactic properties.

Hence going by the interpretation clauses both in the KVAT Act and Customs Tariff Act 1975, the said preparation will not fall under HSN 3004.90.11 in entry 36 of schedule III to KVAT Act and hence would be taxable @ 12.5% by virtue of entry 103 of SRO 82/06.

Revive (Starch) and Alive(Starch) :- As per entry 122 of schedule III to KVAT Act, “Starch of all kinds including modified starch and dextrans “are taxable @ 4%. Therefore Revive (Starch) and Alive (Starch) are taxable @ 4% vide entry 122 of schedule III to KVAT Act.

Points (2) to (4) are not entertainable U/s. 94 of KVAT Act.

The issue raised is clarified accordingly.

Commissioner.

