

**2. PROCEEDINGS OF THE COMMISSIONER, COMEMRCIAL TAXES  
THIRUVANANTHAPURAM**

Present:- Sri.Paul Antnoy.IAS

Sub:- KVAT Act-2003- clarification under section 94- Rate of tax of  
Halls Ayurvedic Tablets”- Clarified orders issued- reg:

Read:- 1. Application dt. 28.07.05 of M/s. Cadbury India (P) Ltd, Kochi.  
2. Positing Notice No.VC1.40688/05/CT Dt.13.12.05

**ORDER No.C7.40688/05/CT Dt. 16.01.06**

M/s. Cadbury India (P) Ltd, Kochi has applied for a clarification under section 94 of the KVAT Act, 2003 regarding the rate of tax of “Halls Ayurvedic Tablets” sold by them.

Sri.Joseph Jerard Samson Rodrigues, Advocate was heard. The main contention of the applicant is to issue a clarification under section 94 read with Rule 78 of KVAT Act 03 and Rules 2005 that the item Halls cough tablets manufactured and marketed by the petitioners may be clarified as Ayurvedic medicines covered by the Entry No. 25 of the 3<sup>rd</sup> schedule taxable @ 4% and not confectionery taxable @ 12.5 %.

In order to substantiate their contention the applicant has filed Drug Licence No.AUS 547 dt. 15.12.98 and also the renewal licence as per certificate dt 25.06.05 issued by the Licencing authority and Director of Indian System of medicines and Homoeopathy, Bangalore. The applicant also filed a copy of the judgement of the Hon’ble Supreme Court of India in Warner Hindusthan Ltd. Vs Collector of central Excise, Hyderabad reported in 1999(6) SCC-762-SC/1999-(113) ELT-24-SC to the effect that Halls is a medicine. The applicant further contended that Halls tablets are manufactured strictly under drug licence and hence medicine as held by the Hon’ble Supreme Court in BPL pharmaceuticals Ltd. Vs Collector of Central Excise, reported in (1997) 104- STC-164- SC in the case of selsum selsun shampoo used to treat dandruff.

The applicant further pointed out the judgments of the Hon’ble High Court of Karnataka and Kerala in United Trading Agency Vs Additional Commissioner of Commercial Taxes in (1997) 104 STC 182 and Deputy Commissioner (law) Ernakulam Vs A.V.Kamath & Sons, reported in (1998) 6 KTR 212 respectively. In both these judgment the Hon’ble High Court of Kanataka and Kerala took the stand that Vico Vajradanthi tooth power, toothpaste, cream etc prepared under drug licence is medicine and not toilet articles. It is also contented that Halls is a Medical preparation which can also be used as confectionary will not alter its basic character in view of the Hon’ble Supreme Court decision in Aryavydya Pharmacy Vs State of Tamil Nadu reported in (1987) 37 STC 346.

The contentions of the applicant were analysed. The question to be decided is whether Halls is an Ayurvedic medicine or a confectionery. The legal position has well settled in a catena of decisions cited by the applicant.

In the recent decision of the Hon'ble High Court of Kerala (Div Bench) in state of Kerala Vs. Tips and Toes Cosmetics India Ltd reported in (2004) 12-KTR 253- Ker also held that "Kajol" an eye ointment prepared under drug licence is Ayurvedic item and not cosmetics. The Hon'ble High Court of Andhra Preadesh in State of Andhra Predesh Vs Koduri Satyanarayana &Co. reported in (1988) 68 STC 233 held that prickly heat Powder is not a cosmetics or toilet preparation, but drug falling under entry 37 of the schedule to the APGST Act 1957. Nycil Powder is held to be medicine by the Hon'ble High court of Gujarat in B shah & Co. Vs State of Gujarat reported in (1971) 28- STC 5 (Guj).

Hence it is clarified that Halls Ayurvedic Tablets manufactured and marketed by Cadbury India Ltd under drug licence is a Drug under entry No. 36 7(e)(i) with HSN code 3003.90.11 of 3<sup>rd</sup> schedule to the VAT Act, 2003, as amended by the KVAT (Amendment) Act, 2005, taxable @ 4 %.

Sd/  
Commissioner