

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

Present:- Sri.Paul Antony. IAS

Sub:- KVAT Act 03- Clarification U/s. 94 – Rate of tax on Dhathri Hair Oil- Clarified orders issued- Reg:

Read:- 1. Application in Form No. 24 Dt. 11.01.06 from M/s. Warriors' Hospital and Panchakarma Centre, Kayamkulam.
2. Hearing Notice No.C7.2546/06/CT Dt. 28.01.06
3. Letter No.D1.906/06/ Dt. 10.03.06 from DC, Alappuzha

ORDER No.C7.2546/06/CT Dt.29.04.06

M/s. Warriors Hospital and Panchakarma Centre, Kayamkulam has applied for clarification under section 94 of the KVAT Act 03 regarding the rate of tax of Dhathri Hair Oil manufactured and marketed by them.

In the application Dt. 11.01.06, the applicant has argued that Dhathri Hair Oil, which is manufactured under Drug licence, sold by them is taxable @ 4 % and the applicant has compounded the payment of tax @ 4 % on MRP, treating it as a Medicinal Preparation. The applicant further stated that Anoop Hair Oil marketed by Godrej is also paying 4 % VAT on MRP.

Sri.C.P.Sukumaran, Authorised Representative of the applicant was heard. The contention of the applicant is that Dhathri Hair Oil is manufactured under Drug licence and is a medicine, not a cosmetic. The product is used for curing diseases like dandruff, migraine and insomnia. The applicant has relied upon the court decisions on 68 STC, 104 STC, 6 KTR etc in support of their argument. Further, the applicant has fairly narrated the manufacturing process under the supervision of Dr.Sajikumar, BAMS, who hails from a family of Paramparya Vaidyas. The parameters to identify a product as a medicine has also been brought to the notice based on the Hon'ble Supreme Court decision in Commissioner of Central Excise Vs Pandit DP Sharma, reported in (2003) 154 ELT 324 SC.

The applicant has produced the certificate of goods manufacturing vide No. ML.4-4253/04/DC, GMP No. 215 granted on 30.03.04 to the effect that the unit licensed under the schedule to Drugs and Cosmetics Rules 1945. license No. 24/250/04 Dt. 08.03.04 also have been produced as supporting evidence.

The contention of the applicant was examined in detail. The question to be decided is whether Dhathri Hair Oil is a medicine or cosmetic. Dy. Commissioner Alappuzha has visited the place of business where the item is manufactured and forwarded a report in this regard. The ingredients are that prescribed in the text Ashtanga Hridaya and Sahasrayoga which are referred in the schedule to the Drugs and Cosmetics

Act 1940. Dy. Commissioner Alappuzha further opined that the item will rightly come under the classification of drug and not a cosmetic.

As pointed out by the applicant, the Hon'ble High Court of Andhara Pradesh in state of AP Vs. Koduri Satyanarayana & Co reported in (1988) 68 STC 233 (AP) held that prickly heat powder is a medicine which is manufactured under drug licence, and not a cosmetic. Similarly the Hon'ble High Court of Kerala in state of Kerala Vs. Tips and Toes Cosmetic India Ltd. Reported in (2004) 12 KTR 253 held that Kajol, an eye oinment prepared under drug license is Ayurvedic item and not cosmetics. In United Trading agency Vs Assistant Commissioner of Commercial Taxes reported in (1997) 104 STC 182 KAR, the Hon'ble High Court of Karnataka held that Vicco Products like tooth paste, tooth powder and cream manufactured under drug licence is medicinal and pharmaceutical preparation and not cosmetics. In State of Madras Vs SP Vadivel Nadar and Sons reported in (1968) 21 STC 448 Mad, the Hon'ble High Court of Madras held that Sarvaroga Sanjeevi thailam manufactured under drug licence is medicinal preparation. In a recent decision of the Hon'ble Supreme Court, in Commissioner of Central Excise Vs Sharma Chemicals reported in (2004) 132 STC 251 SC held that Banphool Oil Manufactured under drug licence and used for treatment of headache, eye problem, Night blindness, reeling head, weak memory, hysteria, blood pressure, Amnesia, Insomnia etc is medicinal preparation and not cosmetics. Dhathri Hair Oil is manufactured under drug licence and used for different diseases and the case dealt with by the Hon'ble Supreme Court is akin to the captioned case.

Hence it is clarified that "Dhathri Hair Oil" manufactured and marketed by M/s. Warriars Hospital and Panchakarma Centre, Kayamkulam is an Ayurvedic medicament taxable @ 4 % under entry 36(7)(e)(i) with HSN Code 3003.90.11 w.e.f 01.04.05.

Sd/
Commissioner