

**88. PROCEEDINGS OF THE COMMISSIONER OF
COMMERCIAL TAXESTHIRUVANANTHAPURAM**

Present:-.Paul Antony. IAS

Sub:- KVAT Act 03- Clarification U/s. 94- Rate of tax on
“NYCIL” prickly heat powder- clarification issued- Reg:

Ref:- 1. Application in Form No. 24 Dt. 28.07.06 filed by
M/s. Heinz India (P) Ltd, Cochin.

2.This office Hearing Notice No.C7.33103/06/CT
Dt. 29.08.06

ORDER No.C7.33103/06/CT Dt. 13.10.06

M/s. Heinz India (P) Ltd, Cochin has preferred an application U/s 94 of KVAT Act 03, requesting to clarify the rate of tax applicable on “NYCIL” prickly heat powder under VAT.

The Authorised Representative of the applicant was heard. It is contended that there is a Supreme Court decision that the said commodity will fall under HSN 3003.10. The HSN 3003.10 is assigned to entry No. 36(7)(a) of 3^d schedule to KVAT Act 03.

The contentions of the applicant were examined in detail. HSN 3003.10 relates to patent or proprietary medicaments other than those which are exclusively Ayurvedic, Unani, Sidha, homoeopathic or Bio-chemical. Supreme Court in Muller & Phipps (India) Ltd Vs. Collector of Central Excise 2004 (167) ELT 374 (SC) held that prickly heat powder having medicinal ingredients are classifiable under medicinal preparation under the heading 3003 of Central Excise Tariff Act 1985. In M/s. Manisha Pharma Plasto (P) Ltd & Another Vs. Union of India CW 1320/98, Hon’ble High Court of Delhi and in Muller case (2004) 4 SC 787, Supreme Court has also held that prickly heat powder has to be classified under the above heading.

In KVAT Act 03, by entry 36, specified medicines, drugs and bulk drugs including Ayurvedic, Unani and Homeopathaic Medicine are classified for the purpose of taxation @ 4 %. Only

those items which are specifically included under entry 36 of 3rd schedule are eligible for 4 % rate. Other items even though classifiable under HSN 3003, cannot be treated as items coming under entry 36 of 3rd schedule .

Further prickly heat powder and similar medicated body powder have been notified vide entry 25 (2) of SRO 82/06 as a commodity taxable @ 12.5 %. Whenever there is a specific entry, it will override general entries.

So “Nycil” prickly heat powder is classifiable under entry 25(2) of SRO 82/06 taxable @ 12.5 %.

The point sought for is clarified accordingly.

Sd/
Commissioner