

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. *Abdul Jabbar.V.K, Joint Commissioner (General), O/o. CCT, Tvpm.*
2. *T.V. Kamala Bai, Joint Commissioner (Law), O/o. CCT, Tvpm.*
3. *Suchala Kumar .S.K., Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.*

Sub:- KVAT Act, 2003- Clarification U/s. 94 - Rate of tax of Tiger Balm -
Orders Issued.

Read:-Application from M/s. Elder Pharmaceuticals Ltd., Kannur dtd 12/2/2011

ORDER No.C3/5764/11/CT DATED 22/10/2011.

1). M/s. Elder Pharmaceuticals Ltd., Kannur has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003, seeking clarification on the rate of tax of Tiger Balm.

2). The applicant contends that the commodity Tiger Balm is an Ayurvedic Medicine which falls under Entry 36(8)(h)(i) of the Third Schedule with HSN code 3004.90.11 and is taxable at 4%. The applicant also contends that the goods are cleared from the manufacturers factory for Excise purposes under the said HSN code. The applicant would further contend that the goods are manufactured under a licence issued under FDA Rules and the licensing authority is Technical Officer (Ayurveda).

3). The applicant placing reliance on the judgment of the Apex Court reported in Puma Ayurvedic Herbal P Ltd., Vs Commissioner of Central Excise, Nagpur [2006 (196) E.L.T. 3 (S.C.)] contends that the Hon'ble Court held that one of the tests to be applied to ascertain whether the goods are medicament of Ayurveda is whether the ingredients used in a product are mentioned in the authoritative text book of Ayurveda. The applicant contends that the ingredients which go into the manufacture of Tiger Balm have reference to Ayurvedic Books. The applicant would further contend that the Apex Court has classified Sloan's Balm, Sloan's Rub and Amrutanjan to be Ayurvedic medication. The applicant also contends that the Hon'ble High Court of Kerala had held that Vicks Tablets and Balm are Ayurvedic Medicines falling under Entry 36 of the Third Schedule of the Kerala Value Added Tax Act, 2003.

4). The authorised representative of the applicant was heard and the contentions raised were examined.

5). In an identical case, M/s Proctor & Gamble Hygiene Ltd., had filed an appeal before the Hon'ble High Court of Kerala against the Order No. C3.7789/08/CT dated 21.04.2008 of the Commissioner of Commercial Taxes, wherein it was clarified that "*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 S.R.O No. 82/2006 and hence taxable at 12.5% and Vicks Balm is taxable at 12.5% vide Entry 103 of S.R.O No. 82/2006.*"

6). The Hon'ble Court while disposing the said O.T. Appeal No. 12 of 2008() in its judgment dated 30/11/2009 observed that the Apex Court in **Natural Health Products (P) Ltd. Vs Collector of Central Excise, Hyderabad [2003 (158) E.L.T. 257 (S.C)]**, had held that Ayurvedic Medicine not having been defined in the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985, **the common**

parlance test would have to be resorted to, for finding out whether a medicine is treated as an Ayurvedic medicine by the public. When there is no definition of any kind in the relevant taxing statute, the articles enumerated in the tariff schedules must be construed as far as possible in their ordinary or popular sense. If the customers and practitioners in Ayurvedic medicine, the dealers and the licensing officials treat the products in question as Ayurvedic medicines and not as Allopathic medicines, that fact gives an indication that they are exclusively ayurvedic medicines or that they are used in Ayurvedic system of medicine, though it is a patented medicine. This is especially so when all the ingredients used are mentioned in the authoritative books on Ayurveda. It was also held that the essential character of the medicine and the primary function of the medicine is derived from the active ingredients contained therein and it certainly has a bearing on the determination of classification under the Central Excise Act. In the same decision, it was further held that mere fact that a product is sold across the counters and not under a Doctor's prescription, does not by itself lead to the conclusion that it is not a medicament. Placing reliance on the said judgment along with the judgments of the Apex Court in *Rittindusta Vs. Collector of Central Excise corresponding to Collector of Central Excise, Hyderabad Vs. Richardson Hindustan Ltd.* [2004 (9) SCC 156], *Commissioner of Central Excise, Calcutta Vs. Sharma Chemical Works* [2003 (154) E.L.T. 328 (S.C)] and *Puma Ayurvedic Herbal (P) Ltd. Vs Commissioner of Central Excise, Nagpur* [2006 (196) E.L.T. 3(S.C)], the Hon'ble High Court of Kerala set aside the above said Clarification order and declared that *the products namely Vicks, Vicks Vaporub and tablets are classifiable under Entry 36 of the Third Schedule attracting only 4% rate of tax.* The Hon'ble Court also held that Rule 23 of Rules of Interpretation and the Entry 36 of the Third Schedule would in no way help to advance the arguments that the products in question do not fall under the Entry 36.

7). The facts of the above said case are squarely applicable in the instant case of Tiger Balm and in view of the facts cited supra, it is clarified that the commodity 'Tiger Balm' is taxable at 4% vide Entry 36(8)(h)(i) of the Third Schedule to the Kerala Value Added Tax Act, 2003, with HSN Code 3004.90.11.

The issues raised above are clarified accordingly.

Abdul Jabbar.V.K.
Joint Commissioner (General)
O/o CCT

T.V. Kamala Bai
Joint Commissioner (Law)
O/o CCT

Suchala Kumar. S.K.
Joint Commissioner (A&I)
O/o CCT