

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

Present:-.Paul Antony. IAS

Sub:- KVAT Act 03- Clarification U/s. 94- Rate of tax on“NYCIL” prickly heat powder- clarification issued- error on the face of records- section 66-rectified- orders- issued
Reg:

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

(2) Order No.C7.33103/06/CTDt. 13.10.2006

(3) Application dated 28.12.2006 filed byM/s. Heinz India (P) Ltd,

ORDER No.C7.33103/06/CT Dt. 26-4-2007

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 the said Act. As per order read as 2nd paper above it was clarified that the commodity is classifiable under entry 25(2) of SRO 82/06 taxable @ 12.5 % for the reasons mentioned therein. Subsequently M/s. Heinz India (P) Ltd filed an application for rectification of the said order under section 66 of the said Act.

It was interalia contended by the applicant that applying the rule of ‘ejusdem generis’ none of the items covered by HSN Code 3003.10 can fall under the exclusion clause given in the rules of interpretation. Further it was contended that item 25(2) of SRO 82/2006 are covered by non medicinal items under HSN 3304.91.90 only and it cannot therefore be considered to take within its ambit any item falling under HSN 3303.10 as it would go against the rules of interpretation and so there is clear mistake apparent on the face of records.

The issues raised have been examined. The question to be answered in this case is whether the commodity ‘NYCIL prickly heat powder’ covered under HSN 3003.10 would fall

under entry 36 of the third schedule or under the list of goods notified as SRO 82/2006.

Tax administration for local sales is a matter of State prerogative. The State has the right to prescribe rates for taxing any goods.

As per clause (a) of sub section (1) of Section 6 of the KVAT Act, 2003 goods covered under second and third schedules to the Act are taxable at one percent and four per cent respectively and those not covered under clause (a) or clause (c) of the said sub section are taxable at 12.5 %

Clause (d) of the said sub section empowers Government to notify a list of goods taxable at the rate of 12.5%. To the said Act there is an 'appendix' containing 'Rules of Interpretation of Schedules.

Clause (vi) of rules of interpretation clarifies commodities given under various entries of the schedules. Item 23 of the said clause reads as follows;

“Entry 36 in third schedule does not include food or beverages such as dietic, diabetic or fortified foods, food supplements, tonic beverages, aqueous distillates or aqueous solutions of essential oils suitable for medicinal use, soaps or **other products containing added medicaments** and blood albumin not prepared for therapeutic or prophylactic uses.”

By this exclusion clause the commodities mentioned therein are explicitly picked out from 'entry 36 of the third schedule', irrespective of their HSN Code. The exclusion clause is well within the legislative competence of the State and would not be hit by the principle of 'ejusdem generis'.

Admittedly the commodity in question 'Nycil prickly heat powder' is a product containing added medicaments. So by virtue of the exclusion clause, the item is no longer a part of 'entry 36 of the third schedule' since the introduction of the said Act. Subsequently, in exercise of the powers conferred under clause (d) of sub section (1) of section 6 of the Act,

Government have notified as SRO 82/2006, the list of goods not falling under clause (a) of the said Act classifiable under the 12.5 % category. In the said notification Entry 25(2) reads as “prickly heat powder and similar medicated body powder”. But the entry is confined only to the commodities covered under ‘HSN 3304.91.90’ which obviously does not cover ‘medicated body powder’ as per the ‘Rules of Interpretation’, even though the description of goods in column (2) speaks other wise. Thus the finding in the order read as 2nd paper is in error to that extent.

Now the question to be answered is how ‘Nycil prickly heat powder’ is to be classified for the purpose of taxation under the said Act in view of the findings ibid. By the exclusion clause mentioned above all products containing added medicaments are explicitly brought out of the ‘entry 36 of the third schedule’. ‘Nycil prickly heat powder’ covered under HSN Code 3003.10 is not an exclusive medicine, but a product containing added medicaments. For the reasons stated ibid the commodity is not classifiable under ‘entry 36 of the third schedule.’ At the same time there is no other specific entry for such commodities in any schedules to the Act.

In these circumstances the product ‘NYCIL prickly heat powder’ a product containing added medicaments, covered under HSN 3003.10 is classifiable under entry 103 of SRO 82/2006 taxable at the rate of 12.5%.

The order read as 2nd paper above stands rectified to the above extent.

Commissioner.