

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. *S.K. Suchala Kumar, Joint Commissioner (Audit & Inspection), O/o. CCT, Tvpm.*

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Rate of tax of the commodities
Anna Vita and Anna Tone - Orders issued.

Read:- Application from Dr. K. K. Babu, Proprietor, M/s Anna Ayurvedics,
Punalur dtd. 21/3/2011

ORDER No. C3/10252/11/CT DATED 23/12/2011.

1. Dr. K. K. Babu, Proprietor, M/s Anna Ayurvedics, Punalur, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the commodities Anna Vita and Anna Tone.

2. The applicant is borne on the rolls of the Office of the Commercial Tax Officer, Anchal and is manufacturing ayurvedic medicines. The applicant contends that they are licensed to manufacture ayurvedic medicines like Anna Vita and Anna Tone as per the license issued by ASU Drugs Controller (ISM).

3. The applicant contends that the Deputy Drugs Controller (Ayurveda) & Licensing Authority, Thiruvananthapuram has issued Certificate to the effect that Anna Tone is approved as Ayurvedic Medicine. The applicant contends that the product Anna Tone sold in jelly form is a premium health supplement. It is meant for patients with dyspepsia, stomach disorders, loss of appetite, weight loss, general ill health etc and hence prima facie, it is Ayurvedic Medicine. The ingredients that go into the manufacture of the product are all Ayurvedic products prescribed by reference texts Sahasrayogam and Ashtangahridayam.

4. The applicant would further contend that the product Anna Vita is purely an Ayurvedic Medicament consisting of mixed product for therapeutic and prophylactic use. The applicant placing reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No. D 28673 of 2005 contends that Anna Vita is liable to be classified as Ayurvedic Medicines falling under Entry 36(7)(e)(i) of the Third Schedule to the Kerala Value Added Tax Act, 2003 which reads:

36 *Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani and Homeopathic medicine but excluding mosquito repellants and those specifically mentioned in the First Schedule and those notified under clause (d) of sub-section (1) of section 6.*

7 *Medicaments (excluding good of HSN headings Nos.3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.*

(e) Other
(i) Medicaments of Ayurvedic system

3003.90.11

5. The applicant contends that as per sub - heading 3003.30 of Central Excise Tariff, Medicament means 'Medicaments used in Ayurvedic, Unani, Tibb, Siddha or Homeopathic Systems, manufactured exclusively in accordance with the formula prescribed in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940. The applicant would further contend that the accompaniment of a Certificate from Drugs Controller alone is sufficient for categorization of a product as Ayurvedic Medicine as held by the Sales Tax Appellate Tribunal.

6. The applicant contends that considering combination of factors like possession of statutory drug license, usage of ingredients with therapeutic and prophylactic properties, capacity to cure diseases, occurrence of ingredients in Ayurvedic texts, presentation of the product to the market as drug, prescription by physicians etc., the products manufactured by the applicant deserve to be interpreted as Ayurvedic Medicines taxable at 4% falling under Entry 36(7)(e)(i) of the Third Schedule with HSN Code No. 3003.90.11.

7. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

8. The applicant's claim that their products fall within the group 'Ayurvedic products' is to be scrutinized relating to the current trade scenario and the legislative intention behind Entry 36 of the Third Schedule to the Kerala Value Added Tax Act, 2003. Taking advantage of Entry 36 of the Third Schedule, which is primarily intended for medicines, the so called medical products and cosmetics are flooding the market with the terms ayurveda, herbal, natural etc. suffixed or prefixed, claiming the rate of tax applicable for medicines. It was particularly to avoid this situation and consequent revenue loss on this account that the Government amended Entry 36 of the Third Schedule.

9. A combination of factors has to be considered in its totality to arrive at a conclusion to the effect that whether the product is a drug, cosmetic or food supplement etc. The contentions put forward by the applicant regarding their products have to be verified within the ambit of the following factors:-

a. Possession of a valid drug licence under the Drugs and Cosmetics Act. Just for the fact of manufacture of an item under license under the Drugs and Cosmetics Act, it cannot be termed as medicament, and it cannot be solely relied upon to clarify that the item is a medicine.

b. Whether its prophylactic and therapeutic properties are only incidental or not is a question to be looked into. The applicant presents that the products Anna Vita and Anna Tone are based on authoritative Ayurvedic texts. From the contentions it is understood that they are used for the general well being of the body. The applicant failed to prove concrete medical uses aimed at curing any particular ailment with specific symptoms. Hence these products are having subsidiary medical and prophylactic use only.

c. The ingredients are mentioned in Ayurvedic texts. But it is not clear that the resultant combination is aimed at any specific ailment.

d. Mode of presentation of the product to the market is another criteria to be looked into. In *Natural Health Products (P) Ltd Vs. Collector of Central Excise, Hyderabad, 2003* (158) ELT 25 (SC), it was held that ayurvedic medicines not having been defined in the Central Excise Tariff Act 1985, the common parlance test would have to be resorted to find out whether a medicine is treated as an ayurvedic medicine by public. The applicant's claim in this matter deserves to be applied with common parlance test. Definitely the common man identify the products Anna Vita and Anna Tone as general health supplements only. The applicant has not presented any evidence to prove otherwise. Advertisements in print and visual media about these products also create an impression that of health supplements. In common parlance, the customers purchase these products to improve their general health and it is impractical to see that ailing patients go for these products for cure. Sick patients go for prescribed medicines aimed at particular symptoms and ailments.

e. Whether it is prescribed by a doctor is a matter of fact to be proved and applicant has not provided any evidence to support the claim.

10. Even though the above said products have therapeutic qualities, that is not enough to qualify the products as Ayurvedic medicine for the purpose of Kerala Value Added Tax Act, 2003. In view of the guideline 23 of the Rules of Interpretation of Schedules appended to the Act, there clearly exists a category of products which may be granted Drug licence based on certain subsidiary pharmaceutical or subsidiary curative or prophylactic value which however cannot be classified under Entry 36 in the Third Schedule despite having Drug licence. In view of the above said facts it can safely be concluded that the commodities Anna Vita and Anna Tone cannot be classified as falling under Entry 36 of the Third Schedule to the Kerala Value Added Tax Act, 2003. Further no other Entry in any of the Schedules to the Kerala Value Added Tax Act, 2003 is suitable for incorporating the said commodities. Hence it is clarified that the commodities Anna Vita and Anna Tone would be taxable at the rate of 12.5% vide Entry 103 of S.R.O. No. 82/2006.

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

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