

GOVERNMENT OF ASSAM  
OFFICE OF THE COMMISSIONER OF TAXES::ASSAM::GUWAHATI

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ORDER

Dated Dispur, the 24<sup>th</sup> May, 2016.

No.CTS-38/2015/72 : The petitioner, M/s. Ashok Kumar Amit Kumar filed a petition seeking clarification regarding rate of tax under the AVAT Act, 03 of certain items.

The fact as stated by the petitioner, M/S Ashok Kumar Amit Kumar, a registered firm having its office at Annapurna Plaza, Fancy Bazar, Guwahati is that the petitioner is a Consignment & Forwarding Agent of many companies and therefore deals in varieties of products. Dealing in different products, they at times find it difficult to categorize products at appropriate tax rates and hence this application seeking clarification under section 105. The products in question are products of M/s Mehta Herbals Pvt. Ltd., Rajkot, Gujrat and Mehta Unani Pharmacy & Co. Pvt. Ltd., Rajkot, Gujrat. Both companies are registered under Food and Drug Control Administration of Gujrat State and is holder of a License in Form 25-D issued by Joint Commissioner (Drugs), Food & Drugs Control Administration, Gujrat State. This license enables the companies to manufacture for sale Ayurvedic (including Siddha) or Unani Drugs.

Perused the petitioner's prayer. Drugs and Medicine was inserted in schedule II at serial nos. 111 w.e.f 31/10/2009. Before that it was at serial nos. 21 of the Fourth Schedule. Now, before proceeding to deliver the clarification sought for it is important to once again examine the explanation attached with the entry. As per Entry-21 of Fourth Schedule of AVAT Act/2003, drugs and medicines are taxable at 4% on MRP basis. The explanation attached with the entry states that "the expression drugs and medicines shall not include products capable of being used as cosmetics and toilet preparation including toothpaste, toothpowder, cosmetics, toilet articles and soaps".

Since the explanation is attached along with the entry, it is clear that the Legislature intended that drugs and medicines which are capable of being used as cosmetics and toilet preparation are to be excluded from this entry. Now, with this proviso which still holds good, the clarification sought for is addressed-

- (1) **Kiss Kandy**.:The item is manufactured under drug license. However, it is used as an edible item in common use. It may have some medicinal property like many other items found in nature but just for that it cannot be considered as a medicine.

Even, in the packaging of the item no medicinal use is mentioned. It is not covered under any other entry of First, Second, Third & Fourth Schedule. Therefore, it is covered under Entry-I of Fifth Schedule and taxable at 14.5%.

- (2) **Coldrop Medicated Mentholated Jumbo Cough Drop**- The item is an edible item and cannot be used as cosmetics or toilet preparation. Hence, it is covered under Entry-111 of Second Schedule and taxable at 5%.
- (3) **Coldrop Medicated Honey Jumbo Cough Drops**- The item is an edible item and cannot be used as cosmetics or toilet preparation. Hence, it is covered under Entry-111 of Second Schedule and taxable at 5%.
- (4) **Coldrop Medicated Ginger Lemon Jumbo Cough Drops**- The item is an edible item and cannot be used as cosmetics or toilet preparation. Hence, it is covered under Entry-111 of Second Schedule and taxable at 5%.
- (5) **Mehta's Sartaj Tail**- The item is capable of being used as a toilet preparation. It is not covered under any entry of First, Second, Third & Fourth Schedule Therefore, it is covered under Entry-1 of Fifth Schedule and taxable at 14.5%.

- (6) **Sartaj Jasmine Oil-** The item is capable of being used as a toilet preparation. It is not covered under any entry of First, Second, Third & Fourth Schedule Therefore, it is covered under Entry-1 of Fifth Schedule and taxable at 14.5%.
- (7) **Boroquin Medicated Prickly Heat Powder-** The item can be used as a toilet preparation. A person can apply this item as a toilet preparation. Therefore, this item is not covered under Entry-111 of Second Schedule and since it is not covered under any other entry of First, Second, Third & Fourth Schedule, therefore, it is covered under Entry-1 of Fifth Schedule and taxable at 14.5%.
- (8) **Mehta's Amla Tel-** The item is capable of being used as a toilet preparation. It is not covered under any entry of First, Second, Third & Fourth Schedule Therefore, it is covered under Entry-1 of Fifth Schedule and taxable at 14.5%.

Sd/-  
(Anurag Goel, IAS)  
Commissioner of Taxes, Assam  
Guwahati

Memo No.CTS-38/2015/72-A

Dated Dispur, the 26 th May, 2016.

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioners of Taxes/ Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioner of Taxes, (All) for information.
4. The Assistant Commissioner of Taxes, (All) for information.
5. M/s Ashok Kumar Amit Kumar, Annapurna Plaza, Fancy Bazar, Guwahati for information.

52/27/5/16  
(H. Borgohain)

Joint Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

M.D.S.  
29/5/16