

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND
ADVANCE RULING**

ACAAR No.68/2015-16.
(Acts Cell – II/27853/2015)

Dated:30.11.2015

- Present:**
1. Thiru. S.K.Prabakar, I.A.S.,
Principal Secretary / Commissioner of Commercial Taxes.
 2. Thiru. R.Vayanaperumal,
Additional Commissioner (CT), (Public Relations)
 3. Thiru. K.Mahalingam,
Additional Commissioner (CT), (Revision Petitions)

1.	Name and address of the Applicant	:	Tvl. Latha Enterprises, No.59/2, 1 st Floor, Govindappa Naicken Street, Chennai – 600 001
2.	Registration Certificate No.	:	TIN: 33171561504 / CST:786798
3.	Date of application	:	04.09.2015
4.	Date of receipt of application	:	04.09.2015
5.	Clarification sought for	:	Rate of tax on "Aswini Homeo Arnica Hair Oil" as a Homeopathic Medicine
6.	Date of Personal Hearing	:	28.09.2015
7.	Represented by	:	Thiru. R.Sridhar, Advocate and Counsel for the applicant – dealers.

ORDER

Tvl. Latha Enterprises, at No.59/2, 1st Floor, Govindappa Naicken Street, Chennai-600 001 (TIN: 33171561504), the distributors of Aswini Homeo Arnica Hair Oil, in the files of Mannady Assessment Circle, Chennai, have preferred application in Form 'VV' and sought clarification under Section 48-A (1) of the TNVAT Act, 2006, read with Rule 12-A of TNVAT Rules, 2007.

2. The applicant-dealers have sought for clarification on the following:

Rate of tax for **"Aswini Homeo Arnica Hair Oil"**, as being a homeopathic medicine.

3.1. The applicant-dealers have stated in their written submissions furnished along with their application that they have been assessed by the assessing authority on their sale turnover of Aswini Homeo Arnica Hair Oil @ 12.5 % and 14.5 % respectively for the assessment years 2008-09 to 2010-11 and for the assessment years 2010-11 to 2013-14, treating it as falling under the Entry in Sl. No. 20 of Part-C of First Schedule to the TNVAT Act, 2006, as against their payment of tax @ 5 % treating it as a homeopathic medicine falling under Entry in Sl. No. 44 of Part-B of First Schedule to the Act, despite the facts and records furnished before him and the repeated directions by the Hon'ble High Court of Madras. On writ petitions against such assessments preferred before the Hon'ble High Court of Madras, the High Court vide its order in W.P Nos.25418 to 25422 of 2014 and W.P. No.31549 of 2014 dated 03.12.2014 have pleased to set aside the assessments at 12.5 % and 14.5 % for the all the respective years and remanded back to assessing authority for passing fresh order in the light of case laws relied on by the dealer-applicant and records furnished. The application for clarification in respect of rate of tax on Aswini Homeo Arnica Hair oil is therefore being preferred before the Authority for Clarification and Advance Ruling, before presenting their case once again before the assessing authority.

3.2. The applicant dealers have stated that Aswini Homeo Arnica Hair oil is approved by Indian Medicines and Homeo Department, Andhra Pradesh as medicine applicable to scalp/head as per their Certificate No.6346/Drugs(H)/93-94/2. This product is produced under license No.43/Homeo/90 issued by the Director and Licensing Authority, Indian Medicines and Homeopathy Department, Andhra Pradesh. This product

Q, Chincona Q, and Pilocapine Q as found in Homeopathic Pharmacopoeia. The Certificate dated 19.1.2008 issued by the Additional Director and Drug Controller shows that the Aswini Homeo Arnica Hair Oil contains the said medicines. It could be understood from the said documents that this product is manufactured under a drug license issued by Appropriate Authority under Indian Drugs and Cosmetics Rules, 1945, as per the formulations under Homeopathic Pharmacopoeia. In this regard the applicant dealer have furnished copies of relevant records as aforesaid and the copies of decision by Hon'ble Supreme Court and High Courts they relied on. On that basis, the applicant dealers have claimed that the product, "Aswini Homeo Arnica Hair Oil" may be classified under Entry, Drugs and Medicines..... " in Sl. No. 44 of part-B of First Schedule to the TNVAT Act, 2006 and the applicable rate of tax may accordingly be clarified.

4.1. The applicant-dealers requested that they might be provided with an opportunity for representing about their products before the Authority for Clarification and Advance Ruling. Accordingly, they were summoned to appear and represent before Authority on hearing posted on 28.09.2015. Thiru. R.Sridhar, the Counsel for the applicant-dealers along with the Representatives of the Manufacturer i.e., "M/s.Aswini Homeo Pharma and the applicant-dealers, have appeared before the Authority for hearing on 28.09.2015 and placed their arguments. The learned Counsel for the applicant-dealers has filed a type set of papers containing the copies of decision by Hon'ble Supreme Court and High Courts as delivered on similar issue by the Hon'ble Supreme Court and the High Court of Madras and Andhra Pradesh.

4.2. The learned Counsel has filed his written arguments, based on the above said documents furnished and the said decisions relied on. The learned counsel has further answered to the query, "Why this product is not marketed through the medical shops; but made available in general stores?", that this Product is classified as an item under Schedule K to the Indian Drugs and Cosmetics Act, 1940, as the Schedule K medicines need

not sold solely in medical shops on prescription of Registered Medical Practitioner. The learned Counsel has finally pleaded that the product may be clarified as taxable @ 5 % as medicine, falling under Entry, "Drugs and Medicines" in Sl. No. 44 of Part-B of First Schedule to the TNVAT Act, 2006.

5. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006, the Rules, 2007 thereto and the relative entries under Parts B and C of First Schedule to the TNVAT Act, 2006. Section 48-A provides for seeking clarification in respect of any point concerned with rate of tax for commodities. The applicant-dealers have sought for clarification regarding rate of tax on "**Aswini Homeo Arnica Hair Oil**".

5.1. The relative Entries under Parts B and C of First Schedule to the TNVAT Act, 2006 are as given below:

- (i) The Entry in Sl. No.44 of Part-B of the First Schedule to the Act reads as under:

"Drugs and medicines including vaccines, syringes and dressings, medicated ointments produced under drugs licence, light liquid paraffin of IP grade."

- (ii) The Entry in Sl. No.20 of Part-C of First Schedule to the Act reads as under:

*"Cosmetics and toilet articles,..... **hair-oil**, hair-dyes, hair-sprayers,body deodorants."*

The expression, "hair oil" is employed in the Entry in Sl. No. 20 in Part-C of the First Schedule to the Act is very broad and not so specific whether it include even the medicated hair oil or not. Since the expression, "hair oil" is plain and broad, it is feasible to have an interpretation that this expression would mean and include the any kind of hair oil including perfumed and medicated ones.

5.2. The Entry in Sl. No. 44 of Part-B of First Schedule is very specific

Indian Drug and Cosmetics Rules 1945, is necessarily be treated as drug or medicine falling under this entry. Though the said separate entries relating to drugs & medicines and cosmetics are made respectively under Part-B and Part-C of the First Schedule to the TNVAT Act, 2006, no definitions are available for the terms, "Drug" or "Medicine" and "Cosmetics" under TNVAT Act, 2006. The terms, "Cosmetics" and "Drug" are defined under section 3(aaa) and section 3(b) of the Drugs and Cosmetics Act, 1940 as given below:

3. (aaa) "**cosmetic**" means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic.
- (b) "**drug**" includes—
- (i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, **treatment, mitigation or prevention of any disease or disorder in human beings** or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

5.4. The details relating to methodology of preparation of the product, "Aswini Homeo Arnica Hair Oil" furnished by the applicant-dealers as obtained from the manufacturers, reveal that this product is a combination of the following Homeopathic medicaments:

<u>Ingredients</u>	<u>Percentage in 100 ml.</u>
1. Arnica Mount – Q	0.05 %
2. Cantharis – Q	0.05 %
3. Pilocarpin – Q	0.02 %
4. Chincona (china) - Q	0.02 %

The above said medicines in herbal form are cleaned, grinded, percolated in alcohol and are known as mother tinctures. The mother tinctures of the said medicines are mixed with coconut oil at the above percentage. The final

compound is the medicine by commercial name, "Arnica Hair Oil", applicable externally on the scalp. On mixing with coconut oil, the mother tinctures would not lose their medicinal properties.

6.1. At this juncture, it is felt essential to draw references from the case laws relied on by the applicant-dealers and their learned Counsel, relating to Hair Oils, towards drawing a conclusion as to whether the product, Aswini Homeo Arnica Hair Oil would fall under the Entry, "Drugs and medicines" in Sl. No.44 of Part-B or under the Entry, "cosmetics and toilet articles....." in Sl. No. 20 of Part-C of First Schedule to the Act. All the case laws referred herein were in relevant to the descriptions of the entries, drugs or medicines and the cosmetics under the respective taxation laws during the relevant period.

6.2. The decision rendered by the Hon'ble High Court of Madras, in the case of The State of Tamil Nadu vs. Sri. Ramthirth International in T.C.(R) No.1767 of 2006 dated 17th April, 2012, is more relevant to this case on hand. In the case of Sri Ramthirth International, the question involved was, "*Whether on the facts and in the circumstances, Ramthirth Brahmi Oil was taxable at 5% as ayurvedic medicine under Entry 20 (A) Part C of First Schedule to TNGST Act, 1959 and not taxable at 16% as hair oil (cosmetic) under Entry 1(ii) of Part F of First Schedule?*" The assessing authority and the First Appellate Authority have held that Ramthirth Brahmi Oil was taxable at 16% as being hair oil under the Entry 1(ii) of Part-F of First Schedule to the TNGST Act, 1959. Whereas the Tribunal had held on the contrary that Ramthirth Brhmi Oil was taxable at 5 % as ayurvedic medicine falling under Entry 20 (A)(ii) of Part C of First Schedule to TNGST Act, 1959. The Revenue, having aggrieved on the decision of the Tribunal, went on Tax case (Revision) before the High Court of Madras, wherein the High Court had confirmed the decision of the Tribunal holding that Ramthirth Brahmi Oil is taxable at 5% under Entry 20 (A)(ii) in Part C of First Schedule as Ayurvedic Medicine and not falling under Entry 1(ii) of Part F of First Schedule to the

6.3. While having come to such a conclusion that the Ramthirth Brahmi Oil is an Ayurvedic medicine the High Court of Madras had followed the decisions rendered by the Apex Court in the cases of –

- Commissioner of Central Excise, Calcutta v. Sharma Chemical Works reported in 2003 (5) SCC 60, and in 2003 (154) ELT 328,
- Shree Baidyanath Ayurved Bhavan Ltd. vs. Collector of Central Excise, Nagpur reported in (1996) 9 SCC 402,
- C. Ex., Calcutta-IV vs. Pandit D.P. Sharma reported in 2003 (154) ELT 324 (SC),
- Puma Ayurvedic Harbal (P) Ltd. vs. Commissioner, Central Excise, Nagpur reported in 2006 (3) SCC 266
- Collector of Central Excise Vs. Richardson Hindustan Ltd, reported in 1989 (42) ELT A100 (SC)/2004 (9) SCC 156, and
- *Meghdoot Gramodyog Sewa Sansthan v. Commissioner of Central Excise, Lucknow* reported in 2004 (174) E.L.T. 14 (S.C.) (2005) 4 SCC 15,

has categorically held that the entries in a statute should be understood according to the popular meaning as understood by the users and not by the scientific or technical meaning.

7. Besides, the decision of the High Court of Andhra Pradesh in the case of Aswini Homeo Pharmacy (the manufacturer of the product dealt herein) vs. Commissioner of Commercial Taxes, Andhra Pradesh in Special Appeal Nos. 8 and 10 of 2000 dated 10.04.2007 and the decision of the Karnataka Sales Tax Appellate Tribunal, Bangalore in the case of Aswini Homeo Pharmacy vs. State of Karnataka in STA No.411/96 dated 07.07.1997 are also the most relevant cases directly applicable to the case on hand. In the case of Aswini Homeo Pharmacy (the manufacturer of the product dealt herein) vs. Commissioner of Commercial Taxes, Andhra Pradesh, the question involved is whether the product, viz., Aswini Homeo Arnica Hair Oil can be taxed as a cosmetic under Entry 36 of First Schedule to the Andhra Pradesh General Sales Tax (APGST) Act or the Drugs &

Medicines under Entry 37 of the said Act. Allowing the special appeals, the Andhra Pradesh High Court has decided, following the decisions as above referred of the Apex Court and considering the documents furnished by the appellant-manufacturer, that the product, "Aswini Homeo Arnica Hair Oil" is a homeopathic medicine falling under Entry 36 of First Schedule to the APGST Act. The Karnataka Sales Tax Appellate Tribunal also had held that the product, Aswini Homeo Arnica Hair Oil is a homeopathic medicinal product.

8. It would be the most appropriate to refer the decision of the Hon'ble High Court of Madras, in the applicant dealer vs. Assistant Commissioner, Mannady Assessment Circle, in WP Nos.25418 to 25422 and 31459 of 2014 dated 03.12.2014. As already pointed out, these Writ petitions were preferred by the applicant dealers, who were the petitioners therein, challenging the assessment by the assessing authority on their sales of the said hair oil as cosmetics at the rates of 12.5 % and 14.5 % for the relevant years from 2008-09 to 2013-14. While allowing the writ petitions, the High Court have observed that the assessing authority has failed to consider the facts, records placed before him and also the decision of the Andhra Pradesh High Court in the case of Aswini Homeo Pharmacy (the manufacturer of the product) in Spl. Appeal Nos. 8 and 10 of 2000 dated 10.04.2007.

9. With the backdrop of the above referred case laws and from the analysis of the facts of the applicant-dealer's case, it is evident that there is difference in description of the Entries relating to the "Drugs & medicines" and "Cosmetics & toilet articles" under First Schedule of the erstwhile repealed TNGST Act, 1959 and the present TNVAT Act, 2006. The Entry 20 (A) of Part-C of First Schedule to the TNGST Act, 1959 contains an exclusion clause which reads, **"(excluding products capable of being used as creams, hair oils, tooth-pastes, tooth-powders, cosmetics, toilet articles soaps and shampoos)"** Whereas the description of the Entry

the TNVAT Act, 2006 does contain no such exclusion clause. Similarly, the Entry 1 with its sub-entries (i), (ii) and (iii) of Part-F of First Schedule to the erstwhile TNGST Act, 1959 contains an explanation clause which reads, "**Any of the items listed above even if medicated or as defined in Section 3 of the Drugs and Cosmetics Act, 1940 (Central Act III of 1940) or manufactured on the licence issued under the Drugs and Cosmetics Act, 1940 (Central Act) will fall under this Entry**". The exclusion clause in Entry 20(A) of Part-C and explanation to the Entry 1 of Part-F of First Schedule to the TNGST Act, enabled expulsion of cosmetics, like, shampoos or hair oil, hair tonic, face lotion and alike products, even if medicated as defined under Section 3(b) of the Drugs and Cosmetics Act, 1940 and manufactured under licence issued under Drugs and Cosmetics Act, 1940, from being classified under entry 20(A) of Part-C but classified under Entry 1 of Part-F of First Schedule to the TNGST Act, 1959. Whereas, the Entry "Drugs and Medicines" in Sl. No.44 in Part-B contains no such exclusion clause and the Entry "Cosmetics and toilet articles....." in Sl. No.20 of Part-C of First Schedule to TNVAT Act, 2006 contains no such explanation clause. It is pertinent to take note that in the case of Sri Ramtirth International, while deciding the issue as to whether the Brahmi Oil would under medicine or cosmetics, the Hon'ble High Court of Madras have categorically concluded it as being an ayurvedic medicine irrespective of the said exclusion clause and explanation clause respectively under Entry 20(A) of Part-C and Entry 1 of Part-F of First Schedule to the TNGST Act, 1959 and the fact that the Brahmi oil is available for sales across the counters without being prescribed by any medical practitioner. Whereas, the expression, "**produced under drugs licence**" employed in the Entry, "Drugs and Medicines" in Sl. No. 44 of Part - B of First Schedule to the TNVAT Act, 2006, enables for classification of the products manufactured or produced under drug licences issued by the Appropriate Drug Controlling Authority under Indian Drugs and Cosmetics Act, 1940 and Rules thereto.

10. In the present case, the applicant dealers have proved beyond doubt the product, "Aswini Homeo Arnica Hair Oil" is manufactured by the Manufacturer-principal, M/s. Aswini Homeo Pharmacy, Hyderabad under Drug Licence for manufacture and sale of Arnica Hair oil with the said ingredients as issued by the Director and Drug Controller, Department of Ayush, Government of Andhra Pradesh. It has also been proved that the product contains the homeopathic medicines found in Homeopathic Materia Medica, such as, Arnica montana, Cantharis, Pilocarpin and China, which are percolated in alcohol and then mixed with the coconut oil in the form of mother tinctures as per the method prescribed in the text books of Homeopathy. Therefore, the product, "Aswini Homeo Arnica Hair Oil" would categorically fall within the scope and meaning of the Entry in Sl. No. 44 of First Schedule to the TNVAT Act, 2006 and can be classified as medicine under the same entry as liable to tax at the rate of 5%.

11. An another pertinent fact to be considered here is that the product "Homeopathic Hair Oil", as correctly pointed out by the learned counsel, is a medicine classified as Item No. 35 under Schedule K to the Indian Drugs and Cosmetics Act, 1940, with effect from 22.12.2014 as per Government of India Notification in GSR. 917(E), Department of Health, Ministry of Health and Family Welfare, dated 22.12.2009, which reads as below:

35. Homeopathic Hair Oils having active ingredients up to 3x potency only.

Prior to 22.12.2014, the same Item 35 was read as Arnica Montana Hair Oil. The drugs and medicines, manufactured under proper drug manufacturing license issued by the Appropriate Authority, but classified under Schedule K to the Indian Drugs and Cosmetics Act, 1940 are need not

issued by the Appropriate authority under Indian Drugs and Cosmetics Act and Rules; but also made available for sale to the consumers through general distribution network. Accordingly the product, "Aswini Homeo Arnica Hair Oil" is made available for sale across the counters in general stores.

12. Moreover, the Hon'ble High Court of Andhra Pradesh, vide its order, in the case of Aswini Homeo Pharmacy vs. Commissioner of Commercial Taxes, in Special appeal Nos. 8 and 10 of 2000 dated 10.04.2007, after having note of the various decisions on this issue of the Hon'ble Supreme Court as above referred, have adjudged that the product, "Aswini Homeo Arnica Hair Oil" is a Homeopathic Medicine falling under Entry 36 of First Schedule to the AP Sales Tax Act. On similar footing, the Hon'ble High Court of Madras has also concurred the decision of the Andhra Pradesh High Court, in the writ petitions preferred by the applicant-dealers above referred vide its order dated 03.12.2014 and quashed the assessment made on the applicant dealers treating the product "Aswini Homeo Arnica Hair Oil" as cosmetics at 14.5% and remanded back to the assessing authority for fresh disposal after considering the facts relating to the method of preparation of the product and the decisions relied on by the applicant-dealers, in particular the decision by the Hon'ble High Court of Andhra Pradesh, vide its order, in the case of Aswini Homeo Pharmacy vs. Commissioner of Commercial Taxes, in Special appeal Nos. 8 and 10 of 2000 dated 10.04.2007. On the foregoing discussions and observations, it is construed that the product Aswini Homeo Arnica hair Oil is construed to be a homeopathic medicine falling under Entry, "Drugs and Medicines....." in Sl. No. 44 of Part-B of First Schedule to the TNVAT Act, 2006 and thereby taxable at the rate of 5 %.

13. The clarification is therefore that Aswini Homeo Arnica hair Oil is taxable @ 5 % as homeopathic medicine falling under

Entry, "Drugs and Medicines....." in Sl. No. 44 of Part-B of First Schedule to the TNVAT Act, 2006.

Dated this the 30th day of November 2015.

Sd/- R. Vayanaperumal,
Additional Commissioner (PR)

Sd/- K. Mahalingam,
Additional Commissioner (RP)

Sd/- S.K. Prabakar,
Principal Secretary/
Commissioner of Commercial Taxes

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The Joint Commissioner (CT),
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The Joint Commissioner (CS)
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All Joint Commissioners (CT) including Enforcement, LTU, MOU and ISIC.

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All Head of Offices (Assessment)

The State Representative, Sales Tax Appellate Tribunal, Chennai– 104.

The Addl. State Representative, (AB) Chennai, Madurai and Coimbatore.

The Director, CTSTI, Greams Road, Chennai – 6.

The Executive Officer, Traders Welfare Board, Chennai – 5.

The Accountant General (Audit)-II, No.44, Greams Road, Chennai – 6.

The Additional Commissioners, Deputy Commissioners, Assistant
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//Forwarded by Order//


Additional Commissioner (RP)