

Read : Application dt.nil (received on dt.28.09.2012) by M/s. Mihir Enterprises.
Heard : Sh. Mitesh Solanki, Partner alongwith Smt. Nikita Badheka, Advocate

PROCEEDINGS

(under section-56 (1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2012/Adm-6/43/B- 2

Mumbai, dt. 9/11/2015

M/s. Mihir Enterprises, situated at Shop No.6, Satyam Building, Ground Floor, Near Corporation Bank, Anand Nagar, C. S. Road, Dahisar (East), Mumbai-400 068 and having TIN 27540012843V, seek determination of the rate of tax on the following products sold under invoice no.2656 dt.26.03.2014 : 'Chataka Pataka (Masala Masti) Ctn', 'Masala Peas - Vatana' and 'Masala Sing'.

02. FACTS AND CONTENTION

The application is reproduced verbatim thus :

"[A] Nature of Business:- We are a distributor of farsan and namkeens manufactured by M/s.Balaji Wafers Pvt Ltd within Mumbai. There are various type of farsans packed in different quantities. The company has given name of the product by own creation only to facilitate the advertisement process & marketing of the product in competitive world. The nature and uses of the product is not effected by recognizing the product with specific other name.

[B] We are collecting & paying tax @5% being our product falls either under schedule entry C-101(a) [being nature of product is farsan] or under schedule entry C-83 [being nature of product is roasted and fried pulses]

[C] There are three different product for which we want to know what is correct rate of tax applicable in the State of Maharashtra, the details of which are as under:-

S.No.	Name of the Product	Name in the Mkt.	Actual product	Sch.Entry
1.	Gold Fingure	Chataka Pataka	Farsan/Namkeen	C-101(a)(21)
2.	Vatana	Vatana	Fried Pulses	C-83
3.	Masala Shing	Masala shing	Farsan/Oil Seeds	C-68

N.B.:- The product Gold Fingure is a commoan product & every manufacturer put a specific name on the packet of the product to create own goodwill & to patronize the consumers in the market. M/s. Balaji Wafers Pvt Ltd has put the name as "Chataka Phataka" on the packet of the Gold Fingure. In other words, Chataka Phataka is nothing but Gold Fingure.

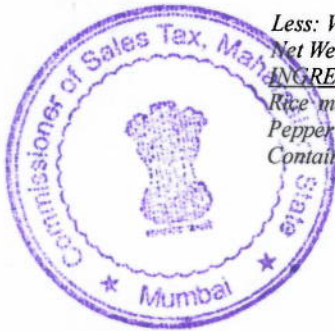
[D] Brief note on each product:-

Description	Quantity
1. CHATAKA PATAKA (Gold Fingure)	100 Kg
<u>Component of the Product:</u>	
Rice Meal	40.00
Corn Meal	12.50
Besan	10.00
Edible Oil	39.00
Flavour	10.00
	111.50
Less: Vapourise/Wastage	11.50
Net Weight	100.00

INGREDIENTS:-

Rice meal, Edible Oil, Corn Meal, Gram Flour, Iodized Salt, Spices & Condiments (Cumin Powder, Chilli Powder, Pepper Powder, Turmeric Powder) Onion Powder, Sugar, Garlic Powder, Yeast Extract, Acidity Regulators E330, Contains Added Flavor, Natural & Nature Identical.

Nutritional Values * Per 100g	
Protein, g	7.26
Total Fat g	33.08
Carbohydrates, g	54.58
Calorific Value, K. Cal	545.08
Cholesterol, mg/100g	0.00
Saturated Fat g	14.88
Polyunsaturated Fat, g	3.31
Monounsaturated Fat, g	13.56
Trans Fat, g	0.00
Sodium, mg	693.00



Vitamin A, mg	0.00
Vitamin C, mg	5.10
Calcium, mg	20.00
Iron, mg	1.42
*Approx	

2. VATANA 100 KG

Component of the Product:

Vatana (Pulses)	96.00
Edible oil	21.00
Masala	4.00
Less: Vapourise/Wastage	(21.00)
Net Weight	100.00

INGREDIENTS:-

Choicest Roasted Peas, Edible Oil, Iodized Salt, Chilly Powder, Pepper, Cumin Powder, Dry mango Powder, Cinnamon, Anise, Cloves,, Coriander, Black Salt, Asafoetida .

Nutritional Value * Per 100g	
Protein, g	18.80
Total Fat g	19.68
Carbohydrates, g	54.13
Calorific Value, K. Cal	468.84
Cholesterol, mg/100g	0.00
Saturated Fat g	8.85
Polyunsaturated Fat, g	1.97
Monounsaturated Fat g	8.06
Trans Fat, g	0.00
Sodium, mg	738.00
Vitamin A, mg	68.00
Vitamin C mg	51.00
Calcium, mg	68.00
Iron, mg	5.80
*Approx	

3. Masala Shing

Component of the Product:

Penuts (Oil Seeds)	118.00	
Edible Oil		10.00
Masala		6.00
Less: Vapourise/Wastage		(34.00)
Net Weight		100.00

INGREDIENTS

Choicest Roasted Peanuts, Edible Oil, Sugar, Chilli Powder, Pepper, Cumin Powder, Dry Mango Powder, Cinnamon, Anise, Cloves, Coriander, Black Salt, Asafoetida.

Nutritional Value * Per 100g	
Protein, g	24.51
Total Fat g	49.86
Carbohydrates, g	18.94
Calorific Value, K. Cal	622.54
Cholesterol, mg/100g	0.00
Saturated Fat g	10.47
Polyunsaturated Fat, g	14.95
Monounsaturated Fat, g	23.93
Trans Fat, g	0.00
Sodium, mg	768.00
Vitamin A, mg	0.00
Vitamin C, mg	1.00
Calcium, mg	44.00
Iron, mg	2.30
*Approx	

[E] Prayer: We hereby pray that early hearing may be granted in the above matter and we are highly obliged if you decides DDO at the earliest and oblige."



03. HEARING

The case was taken up for hearing on dt.17.06.2015 when Sh. Mitesh Solanki, Partner alongwith Smt. Nikita Badheka, Advocate attended the hearing. It was submitted thus :

a) Chataka Pataka:

It is claimed that the same is a 'gold finger' as notified in the entry for Farsan under C-44(b). The

applicant had queried under RTI as to what is covered by the word 'gold finger'. However, no information about the product was available with Sales Tax Department. Therefore, applicant enquired in the market about any product by the name gold finger. It was learnt that the applicant's product is identical to the products known as gold finger in the market.

b) Masala Peas:

It is claimed that the product 'Masala Peas' is covered under entry C-83 "Roasted or fried pulses including gram except when served for consumption". It was submitted that merely adding 'masala' to make it edible would not take the product out of the entry. The product has other ingredients as iodized salt and chilly powder in addition to the fried peas. The product continues to be fried pulses. The addition of salt and chilly powder is to make the product marketable. The applicant is relying on the case laws: **Agarwal & Co. (Hon. Bombay High Court 48 STC)**, **Trupti Foods (Hon. MSTT decision)**, **India Gypsum Ltd. (Hon. Bombay High Court 25 VST 210)** and **La Bela Products (Hon. Bombay High Court 59 STC 221)**. It is also sought to rely on Hon. Supreme Court decisions which state that –

- i. Modern Society interest to be taken into consideration including new facts and new situation. [J. K. Cotton Spinning And Weaving Mills Ltd. And Another (68 STC 421) and Bharat Sanchar Nigam Ltd. & Anr Vs. Union Of India & Ors. (145 STC 91)]
- ii. Interest which advances the object to be preferred. [Industrial Coal Enterprises (114 STC 365 SC)]
- iii. If plain meaning not clear, object of notification to be seen. [India Cements Ltd.(40 VST 225 SC)]

c) Masala Sing:

It is claimed that the product is covered by the entry C-68(i) for Oil seeds, that is to say:-

(i) Groundnut or Peanut (Arachis hypogala). It was submitted that merely adding masala, salt, etc. does not cease the product from being covered by the entry.

d) The applicant also gave a written statement thus :

1) CHATAKA PATAKA (Gold finger)

Components of the Product:

- a) Rice Grist / Flour
- b) Corn Grist /Flour
- c) Besan
- d) Edible Oil
- e) Various Flavours/Masala

A) ALOO SEV (Farsan List no. 8 as "Shev")

Components of the Product:

- a) Rice Grist / Flour
- b) Besan
- c) Photo Flakes
- d) Tapkir
- e) Edible Oil
- f) Various Flavours/Masala

B) SHING BHUJIA (Farsan list no. 17 as "All kind of Bhajias")

Components of the Product:

- a) Peanuts
- b) Adad Flour, Tapkir
- c) Besan
- d) Corn Grist /Flour
- e) Edible Oil
- f) Various Flavours/Masala

It is also to be noted that Rice Flour, Corn Flour, Besan, Edible Oil and Masala's used in both products mentioned in "A" and "B", which is commonly known as farsan or varieties of farsan. All the raw materials are used by us are grown and available within India.

Consumer/user

Consumer of the all the products including imputed product is lower and middle class of peoples, the imputed product is not such a luxury product, as the product consume as a breakfast.

2) MASALA SHING

Components of the Product:

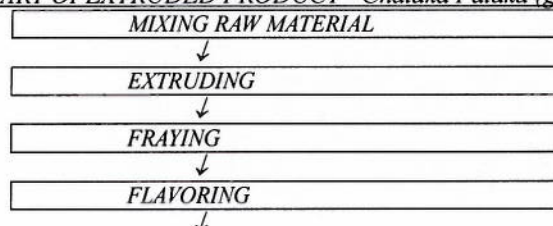
- a) Peanuts (Shing Dana)
- b) Edible Oil
- c) Various Flavours/Masala

3) VATANA

Components of the Product:

- a) Vatana (Pulses)
- b) Edible Oil
- c) Various Flavours/Masala

PROCESS FLOW CHART OF EXTRUDED PRODUCT - Chataka Pataka (gold finger)



PACKING

First of all Rice Grist / Meal & Corn Grist / Meal are mixing and then after it goes for the extruded and after extruded it goes for the fraying and after fraying flavors are added and after adding flavors the final product goes for the packing.

PROCESS FLOW CHART OF FARSAN

DOUGH PREPARATION

EXTRUDING

FRAYING

FLAVORING

PACKING

First of all Dough Preparation of Raw Material are made and then after it goes for the extruded and after extruded it goes for the fraying and after fraying flavors are added and after adding various flavors the final product goes for the packing.

PROCESS FLOW CHART OF NAMKEEN

PULSES SOAKING

WASHING

DRYING

FRAYING

FLAVORS

PACKING

First of Raw Material i.e Pulses are Soaking for two to three hours than after it goes for the washing after washing the pulses it goes for the drying after that it goes to the fraying into the fryer for fry and after fraying flavors are added into the Pulses and finally it goes to the packing.

- e) It was requested that the determination order be given prospective effect if the contention is not acceptable as the applicant has followed the market trend and interpretation by judicial forums. It was stated that a written submission would be tendered within 7 days.

The submission as promised during hearing was sent on dt.03.09.2015. It states thus :

1. "Further to the Application made by my above client, the hearing of the matter was granted on 03/06/2015. The matter was thereafter adjourned and finally heard. During the proceedings from 2012 to 2015, my client has submitted before your office various details relating to the three products in question including the method of preparation, the contents of the 3 products etc. I was asked to give the details of similar products available in market as also written submission.
2. My client has obtained the samples of identical products with the invoices and the same is submitted on 08th July 2015. Meanwhile the Hon'ble Tribunal was to hear and finalise the matter of DDQ appeal in case of Neu life. I had therefore requested to grant time to submit my say after the order by the Hon'ble MSTT vide my letter dt.10-08-2015. A copy of order of Hon'ble Tribunal is now available with me and I am giving herein below my short submission.
3. My client has submitted that the product is classified as namkeen under the Excise Act. My client has also submitted on record the Trademark Registry wherein the product Gold finger is a registered Trademark of Balaji Wafers Ltd. My client is the distributor of Balaji Wafers.
4. My client has also submitted on record an RTI Application copy. The application was made to inquire whether the product "gold finger", specified in the notification of farsan under C-94 has any predefined ingredients or contents. My clients have received the information that no information is available about the contents or the ingredients of Gold finger in the office of the Commissioner of Sales Tax. A copy of application and reply is submitted on record. Therefore we need to consider what is goldfinger in trade parlance/common parlance.

During the course of argument, it appeared that there is no dispute about the following two products:

- i) Vatana sold and marketed as Vatana is nothing but fried pulses and covered by C-83.

Schedule C 83 reads as follows:-

Sr.No.	Name of the Commodity	Conditions and exceptions	Rate of Tax	w.e.f.
83	(a) Roasted pulses, other than roasted gram and dalwa specified in sub-	--	5.00%	31.7.2014

entry (b) of entry 39 of Schedule A, except when served for consumption; (b) Fried pulses including fried gram, except when served for consumption.		1.8.2014 to date
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ii) The next product is Masala Shing. This product is Shing Bhajia and would squarely fall in Entry 17 of the notification relating to Farsan under schedule C -94. Alternatively it is nothing but oilseed.

6) The last product is Chataka Pataka (Gold finger). The product has got the name mainly on account of its shape as a finger and the Golden colour (bright orange) is on account of ingredients used to prepare the same.

During the course of hearing, the Hon. Commissioner has stated that on website the Goldfinger is something else. I do not know on what basis this information on net can be relied on. The information on website is basically not reliable in judicial proceedings, except if it is available on government website. In the present case different website has different results. Therefore, with due respect, the product need not be as per the information available on website. It must be seen whether the product fits into the classification of farsan or not in terms of the entry C-94 & notification.

7. Entry C-94 reads as follows :-

94	(a) Sweet and sweetmeats including Shrikhand, Basundi, Doodhpak except when served for consumption excluding ice-cream, other edible ice whether or not containing coca, Kulfi, non-alccholic drinks containing ice-cream or Kulfi, sweet drops, toffees, chocolates, other confectioneries and all kinds of bakery products. (b) Varieties of farsan as may be notified, from time time, by the State Government in the *Official Gazette, Except when served for consumption.	--	[5%]	1.4.2010 to date
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Therefore the only the farsan which is stated in the notification would be subject to reduced rate of tax. My client has been able to obtain details and specimen of identical product being sold in market as gold finger (sample submitted on record). My client has also submitted on record specimen of similar products being sold at reduced rate in market. The name by which it is marketed is not important, what is important is the ingredient as also as to its classification as farsan by the trade as such.

8) Farsan as it was and is commonly known today is marketed as Namkeen. It is by now settled law that, the law must take into consideration the changes in the product under new situations. Some changes may be required in the product. The marketing strategy may change but the basic nature of the product as farsan remains the same. The Additions made to the entry of farsan over a period of time confirms my submission. For example, "Khakra" which is not commonly known as Farsan is included in the notification of farsan. The product detailed in the notification are now a days commonly known as Namkeen.

9) It must also be remembered that the only exclusion to the notification is if the same farsan is served for consumption in any restaurant, eating house, etc. then it would not be eligible for benefit of reduced rate. My client has not served the products in hotel or restaurant. All the sales are to the retailers. Therefore all the varieties of farsan specified in the notification whether sold loose or in packages, whether sold under brand name or otherwise would be eligible for reduced rate of tax subject to the only one exclusion provided therein.

10) Kindly refer to the proposition made by the Supreme Court in the case of JK Cotton Mills (68 STC 421) and in the case of BSNL (145 STC 91) Both the judgments have held that interpretation of law must move with times. Law cannot be static.

11) Another proposition commonly approved by the Apex Court is to favour the interpretation which advances the object of the entry. Kindly refer to the case of Industrial Coal (114 STC 365 SC). Recently in case of India Cements, the Apex Court has also stated that if the plain meaning is not clear then the object of the notification must be seen (40 VST 225).

12) You must also be aware of the latest judgment by the Tribunal in case of Neulife Nutrition Systems in VAT Appeal 931 and 932 of 2014 dated 06/08/2015. The Hon'ble Tribunal has clearly observed that the impugned powders even if made with reference to achieving some goals, they are nothing but beverages. The Tribunal has in this order replied to each and every argument made by the State and held the Appeal in favour of the assessee. The ratio is very clear.

13) In case of Gold Finger, ideally the State ought to have provided some description. The State having failed to provide the description, the trade has followed the Common Parlance meaning. It must be appreciated that this view is confirmed by almost all the major manufacturers selling identical products. The product Chataka pataka is a farsan and ought to be considered as farsan only covered by entry of Gold Finger.

14) Few more decisions arising from the Bombay Provisions, which I would like to rely are as follows.

- Agarwal and Company 52 STC 117(Bom) – The Bombay HC held that Milk means, Milk in every form and would include milk powder as well.
- La Bella Products 59 STC 221 (Bom). – The Bombay HC held that Sticking bindi is also Kumkum.



The Bombay HC observed that the Law and interpretation must move with time.

- c. *Chedda Marketing 54 VST 45(Bom) The Bombay HC held that Goggles are nothing but medical devices. The Bombay HC held that if the product fell squarely within the item described in the notification, the Commissioner had no jurisdiction to disallow the claim of the appellant on the basis of the intention behind the notification.*
 - d. *Indian Gypsum Ltd. (25 VST 210) – The Bombay HC held that all types of Gypsum Boards are included.*
 - e. *Samruddhi Industries Ltd. (STR-20 of 2006 Dt.23.12.2014) – Bombay HC has held that the product Ghamela should also be allowed benefit of reduced rate. The Commissioner had held against the Assessee by holding that the Product is not industrial input.*
- 15) *Therefore to sum up, the classification of a product must depend on the common parlance /trade parlance. My clients have submitted that the product is treated by the Trade as Farsan and taxed as such by the Trade in general.*
- On the other hand there is no official information available as to what is meant by Gold Finger in the State.*
- 16) *In the alternative, my clients have also requested for prospective effect to the decision. This is for the simple reason that no information was available as to what is meant by Gold Finger. I therefore request you to kindly, allow the claim of my client and oblige.”*

Smt. Nikita Badheka (Advocate) again attended on dt.03.11.2015 and produced different flavours of the product having description on the packet as ‘Goldfinger’. A sample packing of the said product was already produced before me on the hearing day. The product is of a Kolkata based company, Saj Food Products Pvt. Ltd. and it is stated to be manufactured at Saj Food Products Pvt. Ltd., Darjeeling. It was stated that this product is available only in some parts of Maharashtra. It was also submitted that the brand ‘goldfinger’ is registered by the said Saj Food Products Pvt. Ltd. The applicant could not use the same name. Hence, to give a new identity, the applicant used the name ‘Chataka Pataka’ for goldfinger.

04. OBSERVATION

I have gone through the facts of the case. The applicant has requested a determination in respect of the rate of tax applicable to the following three products :

1. Gold Finger - Chataka Pataka (Masala Masti)
2. Masala Peas - Vatana
3. Masala Sing

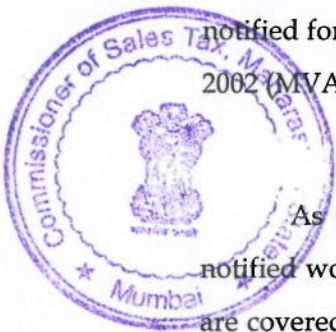
I deal with each of the products in the order as above.

CHATAKA PATAKA (MASALA MASTI)

The applicant claims that Chataka Pataka (Masala Masti) is ‘Goldfinger’, an item of ‘Farsan’ as notified for the purposes of the schedule entry C-94(b) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002). The entry reads thus :

Varieties of farsan as may be notified, from time time, by the State Government in the Official Gazette, except when served for consumption.

As can be seen, the entry speaks of a notification and only those items as are found notified would be covered by the schedule entry. Thus, it is not the case that all types of ‘farsan’ are covered by the schedule entry. Further, the entry does not cover the items of ‘farsan’ when they have been served for consumption. For the impugned product, it is claimed that the same is

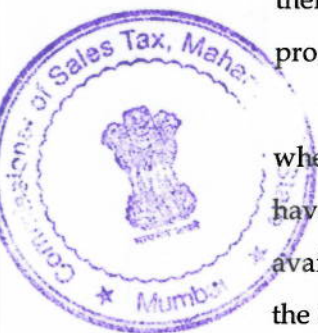


'gold finger' as notified at sr. no.21 in the notification No.VAT-1505/CR-165/Taxation-1 dt.01.06.2005. I have seen the impugned product. The ingredients of the impugned product have been reproduced above. It comes in the form of light crisp sticks, the inside of which cannot be seen. These aren't open or hollow from within. The size of the sticks or pieces as found in a packet may vary but the point is that they come across as being comprised of the same material throughout the length and breadth of the stick. Though the impugned product and 'gold finger' are 'ready to eat' items, there exist significant differences between the two. Whereas the gold finger, as has been notified, are pipe or cylinder shaped items which are of straight length and are hollow or empty within just like a pipe or a ring (which is inserted on a finger). The colour is golden or yellow resembling that of the yellow metal. The size is that of a finger. Since this is an item relished by the kids, the hollowness comes useful such as to induce the kids to insert the tube type food item in one's finger like a covering for the finger and playfully flaunt the covered finger as a finger made of 'gold'. As mentioned earlier, the yellow metal colour gives the golden appearance and since the item fits the finger, it is brandished as a finger made of gold. Hence, the name 'gold finger'. This being the make and style of the product 'gold finger' as notified, the impugned product comes nowhere near the same.

It can be seen from the above that the very name of the product in respect of which claim is being laid is an indicator of the product. The words are distinctive as in 'gold finger' resembling a finger made of gold and this could be possible only when an item is of the type as could be temporarily wrapped around a finger or inside which a finger could be kept. Thus, there could have been no difficulty in interpreting this item and further, too, that the impugned product is not the same as the 'gold finger' as has been notified.

The applicant has argued that no information about the product was made available when the applicant had queried under the Right to Information Act, 2005 (RTI Act). To this, I have to say that 'information' as made available under the RTI Act is the one which is readily available. An interpretation which would have to be made cannot form an 'information' under the RTI Act. Yes, opinion or interpretation which is readily available can be sought and given. In the present case, as to what constitutes 'gold finger' was an interpretation and hence, was not there to make it readily available under the RTI Act. Therefore, the applicant cannot seek shelter of the RTI Act to argue that no information about the product was readily available so as to guide the applicant. I have seen the copy of the reply given to the applicant under the RTI Act. It simply states that the information about the contents of the product 'Gold finger' are not available with the office. Every manufacturer has his own set of combination of ingredients, more particularly the condiments and spices, etc. Therefore, it was informed that contents of the product 'Gold finger' are not available with the office.

The applicant has made extensive arguments, and I have reproduced all hereinabove, to claim that the impugned product is covered by the word 'Gold Finger' as notified in the



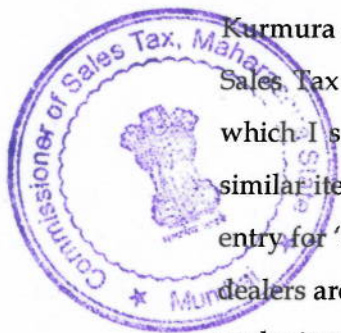
notification for the purposes of the entry for 'Farsan'. A lot many case laws also have been cited by the applicant to buttress his claim for inclusion in the notification. With utmost respect, I say that the said case laws would not be applicable to the impugned case. The facts in the present case are such that the impugned product (Chataka Pataka) and the product (Gold finger) in respect of which claim is being laid are not the same. Both have peculiar features which are individual to each product. The impugned product is not designed such as to be of a hollow frame which could be playfully useful for inserting one's finger into it. The facts not being the same, reliance on the case laws would not be useful to the applicant.

There was a determination order earlier in the case of M/s. Fritolay India (DDQ-11-2002/Adm-5/74&75/B-7 dt.29.01.2004) wherein one of the products was 'Masala Kurkure'. The ingredients of the said product as mentioned in the aforesaid determination order and the impugned product are somewhat similar as can be seen thus :

Chataka Pataka	Masala Kurkure
Rice meal, Edible Vegetable Oil, Corn Meal, Gram Flour, Iodized Salt, Spices & Condiments (Cumin powder, Chilli Powder, Pepper Powder, Turmeric Powder) Onion Powder, Sugar, Garlic Powder, Yeast Extract, Acidity Regulators E330, Contains Added Flavor, Natural & Nature Identical	Rice Meal, Corn Meal, Gram Meal, Palmolein Oil These are fried in Vegetable Oil at a controlled temperature and are then coated by a slurry of seasoning after, which they are packed.

In addition to above, it is also seen that both are similar in taste. The taste could not be said to be exactly the same due to the different proportions in which the condiments and seasonings may have been used. Further, these are also sticks which just like the 'Chataka Pataka' before me aren't open like rings or pipes. Though the determination was under the erstwhile Bombay Sales Tax Act, 1959 (BST Act), the claim therein was also as a 'farsan' but under the notification description of 'Salted or Special Kurmura and Murmura'. The product 'Gold finger' was also notified in the same notification alongwith the item 'Salted or Special Kurmura or Murmura'. While holding that the said product is an edible food which is ready to eat foodstuff, the determination order rejected the said claim of the product being 'Salted or Special Kurmura and Murmura'. The determination order was later confirmed by the Hon. Maharashtra Sales Tax Tribunal (Hon. MSTT) in Appeal No.48 of 2004 decided on dt.25.06.2009. The point which I seek to make when I refer to this determination order herein is that even for such a similar item, claim was not laid as to the said product being a 'Gold finger' as notified under the entry for 'farsan'. This aspect assumes significance when I see that the applicant claims that other dealers are also treating similar items as 'gold finger' or that there is a market trend to treat items as the impugned product as being 'gold finger'. It needs also to be appreciated that the product 'goldfinger' was notified as an item of 'farsan' even under the BST Act and thus, is not an item freshly coined under the MVAT Act, 2002.

I would refer herein to a decision of the Hon. MSTT in M/s. Gurunank Pungali Karkhana, M/s. Laxmi Pungali Karkhana, M/s. Kailash Pungali Karkhana, M/s. Vasant Pungali Karkhana Versus State of Maharashtra (S.A Nos.334-340 of 1993 dt.31.01.1996). The product herein was



stated to be "goldfinger" popularly known as "pungali (पुंगळी)". 'Pungali' means a hollow cylindrical tube. The Hon. MSTT has reproduced the description of the entry for 'farsan' as was available from time to time. 'Gold finger' was held as being 'farsan' when the entry had 'farsan' as the only words. In the later periods, the entry for Farsan had a notification enlisting the products to be 'farsan' just as the entry in the proceedings before me. I would reproduce herein the words of the notification whereby exemption from whole of tax was granted to the product 'goldfinger' :

"Sales or purchases of products of Gold fingure prepared out of maida and other ingredients such as Papad Khar, food colour, rawa, salt etc."

The above case fortifies my observations about 'goldfinger' being a pipe or cylinder shaped item which is of straight length and hollow/empty within so as to be enabled to be inserted on a finger. The product 'Chataka Pataka' comes nowhere near to a 'goldfinger' as understood by the notification under the MVAT Act, 2002 or the BST Act. I need to vehemently say herein that all arguments of the applicant should now be laid to rest.

A photocopy of the packing of the product Bisk Farm's "Gold Finger (Chatpata Spice)" of a Kolkata based company (Saj Food Products Pvt. Ltd.) and also sample packing of the same product in different flavours has been submitted by the applicant to show as to how a 'gold finger' was being treated. The ingredients as can be seen from the packing sample are *Rice meal, Corn Meal, Gram Meal, Edible Vegetable Oil, Salt, Sugar, Onion Powder, Chilli Powder, Ginger powder, Garlic Powder, Coriander Powder, Black Pepper Powder, Turmeric Powder, Natural & Nature Identical Flavoring Agents and Antioxidant*. It is claimed that this product with the brand name 'Gold finger' is same as the applicant's product and the brand, having been registered, the applicant preferred a different name. I have explained above as to what is 'gold finger'. It was further submitted that these products could be obtained only in some parts of Maharashtra. These products as seen from the packing sample come nowhere near to the goldfinger as described by me above. Further, we have seen above that other dealers such as M/s. Fritolay which have a product similar as the applicant's product are not claiming their product as being 'goldfinger'. Considering all this, the applicant does not make a point by giving the packing samples of the product of the Kolkata based company.

Since the impugned product and a 'gold finger' are inherently different items, without going to any further deliberations, I determine that the impugned product is not a 'gold finger' as notified for the purposes of the schedule entry C-94(b) for 'Farsan'. The other items as notified from time to time are thus :

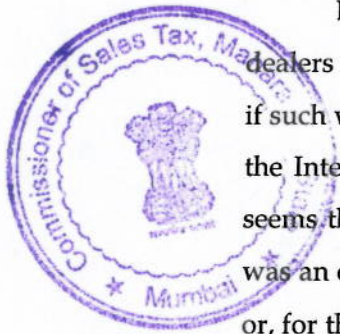
Sr. No.	Products
1	Suki Bhel, Bhel puri
2	Bhusa
3	Khaman-dhokla
4	Muthias
5	Patara



6	Bakarvadi
7	Vadas of all kinds
8	Shev
9	Gathia
10	Papadi
11	Phapada
12	Kadboli
13	Khari Bundi
14	Dalmoth
15	Fried Gram Dal
16	Fried Moogdal
17	All kinds of Bhajias
18	Samosa, Kachori, Patties and Ghughras
19	Salted or Special Chakli
20	Salted or Special Kurmura or Murmura
21	Gold finger
22	Pani puri
23	Sabudana poha
24	Khakara
25	Chivda including that made of potato
26	Potato wafers and Sali
27	Banana Wafers and Sali
28	Deleted
29	Khandvi
30	Channa chur

The applicant had tried to make an argument that the impugned product is covered by the description 'Gathia'. However, later, it was submitted that the applicant does not wish to pursue the said alternate argument as the applicant is convinced of the impugned 'Chataka Pataka' being a 'goldfinger' as covered by the notification. Even though, the applicant has withdrawn the argument, I would dwell on the same, albeit briefly. In this regard, I have to say that the impugned product could not be termed so. 'Gathia' is a very well-known item made from chickpea flour with the addition of spices. In no circumstances could the impugned product be offered or given to a customer when he wishes to be given 'gathias'. Again 'gathias' were also included in the notification under the BST Act and the applicant in the determination order in M/s. Fritolay India cited hereinabove had laid no claim to this item. Thus, market trend is not to treat the products such as the impugned item as 'gold finger' or 'gathias'. The applicant is incorrect to treat his flawed interpretation as being a general practice of the Trade.

During hearing, the applicant was coming up with the "only" argument that other dealers are treating similar products as the impugned product as being 'Goldfinger'. To find out if such was really the position and also with a view to have some immediate clarity in the matter, the Internet was accessed as an impromptu exercise to find the said information. However, it seems the applicant has misinterpreted the action as being one against judicial interpretation. It was an exercise just to ascertain the claims made by the applicant. During hearing, my endeavor or, for that any matter, any Commissioner, is to be all ears to facts brought to notice. A hearing is to be conducted in the most unprejudiced manner and we are committed to follow the same. An order based on interpretation of available provisions follows thereafter. A determination order affects not one dealer or applicant but all similarly situated dealers in the State of Maharashtra. Therefore, determination orders are passed with the utmost care to bring out the interpretation



of the available provisions in respect of which a dispute was raised before the Commissioner. It is by all means unmistakably clear that interpretation of statutes can be had by no means other than the provisions themselves. No external considerations can be had and, that I am very well aware of. The extensive deliberations had by me as at above vouch the fact that my interpretation in respect of the impugned product of 'Chataka Pataka' was based not on external considerations but available provisions. Thus, the applicant's apprehensions about the reliability of the information with regard to the interpretation are baseless. And we have also seen in the determination order in the case of M/s. Fritolay India (cited supra) that no claim was laid in respect of a similar product as the present 'Chataka Pataka' as being a 'goldfinger'. Thus, the contention about market practice also does not find support.

Now, it can be seen that there are no other items in the above notification which fits the description of the impugned product. Since the impugned product has not been notified, I need not discuss whether the impugned product has been served for consumption or not. Now, it is seen that there is no specific schedule entry which covers the impugned product. In view thereof, the product 'Chataka Pataka' gets placed in the residuary schedule entry E-1 of the MVAT Act, 2002, thereby liable to tax @12.5%.

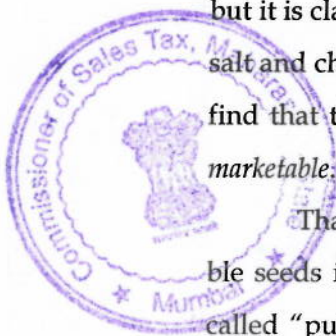
MASALA PEAS

The applicant claims that the product 'Masala Peas - Vatana' is covered by the schedule entry C-83 of the MVAT Act, 2002. The entry reads thus :

83	Roasted or fried pulses including gram except when served for consumption	5.00%	01.02.2006 to 31.7.2014
	(a) Roasted pulses, other than roasted gram and dalwa specified in sub-entry (b) of entry 39 of Schedule A, except when served for consumption;		1.8.2014 to date
	(b) Fried pulses including fried gram, except when served for consumption.		

It can be seen that the schedule entry covers fried pulses (*except when served for consumption*). The ingredients of the impugned product, as mentioned on the packing, are *White Peas(80%), Edible Vegetable Oil, Iodized Salt(2%), Chilli Powder(1%)*. The present product is in fried form but it is claimed that the product continues to be fried pulses despite other ingredients as iodized salt and chilly powder in addition to the fried peas. I would analyze the claims but prior to that I find that the applicant has stated that *the addition of salt and chilly powder is to make the product marketable*:

That the white peas are pulses is not disputed by me. Legumes are plants that carry edible seeds in a pod. All beans, peas and peanuts are legumes. The dried seeds of legumes are called "pulses". Cereals and Pulses are eaten as staple food i.e food proper. However, certain items of snacks are also made therefrom. Therein comes the need to reinvent the modest staple food into instant, ready-to-eat chatpata-spicy form which is savoured for its peppery or crispy taste. Thus, staple foods have utility in providing the very basic and essential meals, as well as,



as items of snacks. In this background, I find that the Schedules under the MVAT Act, 2002, providing for the rates at which commodities would suffer taxes, do also recognize these facts. What I say would be clear when we see the following schedule entries :

Schedule A

9 Cereals and pulses (during the period from 1st April, 2005 to 31st March, 2006) in whole grain, split or broken form other than those to which any other entry in this Schedule or any other Schedule applies. [1.4.2005 to 30.4.2005]

Cereals (other than paddy, rice and wheat) in whole grain, split or broken form and their flour whether sold singly or in mixed form. [1.5.2005 to date]

- 9A (a) **Paddy, rice, wheat and pulses** in whole grain, split or broken form;
 (b) The flour of wheat & rice including atta, maida, rawa and suji whether sold singly or in mixed form;
 (c) The flour of pulses including besan when sold singly and not mixed with flour of other pulses or cereals, sold during the period from 1st May 2006 to 31st March 2016 (*)

*** - The period of operation of this entry has been extended from time to time.**

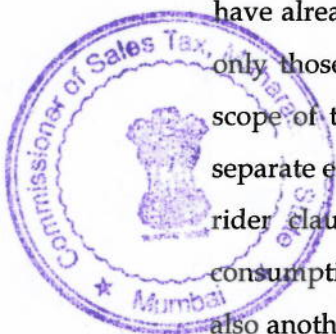
Schedule C

- 37 (c) Pulse flour including besan mixed with flour of other pulses, when sold on or after 1st May 2005. [1.5.2005 to date]
 (d) Pulse flour including besan mixed with flour of cereals including maize when sold on or after 1st May 2005. [1.5.2005 to date]
 (e) Pulse flour including besan mixed with flour of other pulses and cereals when sold on or after 1st May 2005. - 4% 1.5.2005 to date
- 83 Roasted pulses including gram. [1.4.2005 to 30.4.2005]
 Roasted or fried pulses including gram. [1.5.2005 to 31.1.2006]
 Roasted or fried pulses including gram except when served for consumption [1.2.2006 to 31.7.2014]
- 83 (a) Roasted pulses, other than roasted gram and dalwa specified in sub-entry (b) of entry 39 of Schedule A, except when served for consumption;
 (b) Fried pulses including fried gram, except when served for consumption
- 94 Sweetmeats and farsan [1.4.2005 to 30.4.2005]
- 94 (b) Varieties of farsan as may be notified, from time to time, by the State Government in the Official Gazette. [1.5.2005 to 31.1.2006]
 (b) Varieties of farsan as may be notified from time to time by the State Government in the Official Gazette, except when served for consumption. [1.2.2006 to date]

Thus, it can be seen that cereals (other than paddy, rice and wheat) in whole grain, split or broken form (as per schedule entry 9) are throughout kept in the tax-free bracket. Paddy, rice, wheat and pulses in whole grain, split or broken form are also kept in the tax-free bracket. Whereas roasted or fried pulses are kept in the 5% tax bracket. Then there is also a category of 'farsan' which is also kept in the 5% tax bracket. I have reproduced hereinabove the items notified as 'farsan'. One finds 'fried gram dal' and 'fried moog dal' notified as items of farsan. I have already mentioned earlier that the entry for 'farsan' does not cover all types of 'farsan' but only those which have been notified. Thus, rest which have not been notified fall outside the scope of the entry despite the fact that they may be an item of 'farsan'. Now since there is a separate entry for 'farsan', it cannot be said that the entry C-83 would cover items of 'farsan'. The rider clause of this entry is that it covers fried pulses except when they are served for consumption. This could mean that the fried pulses are 'ready-to-eat' items. However, there is also another aspect which needs consideration. I have come across a Paper on "*Indigenous storage practices in pulses*" [Web article in the Indian Journal of Traditional Knowledge (Directorate of Planning and Monitoring, Tamil Nadu Agricultural University)]. Of the various practices discussed herein, one is thus -

"6 Frying of pulse grains

Farmers evolved a storage technique to get rid of storage pests like pulse beetle by frying them in an iron pan (Fig. 6). The storage life of green gram and black gram for consumption purpose increased by just frying them in an



iron pan for 3-4 minutes. After frying, the grains were stored in the tin or plastic containers for domestic purpose. Nearly 60% farmers in Melathulukkankulam village, Kariyapatti taluk and Virudhunagar district adopted this indigenous technology for storage of pulse grains. Frying of pulse grains before storage is believed to reduce pod borer damage considerably up to 80%. By frying, the seed coat of pulse grains became hard and the pod borer damage was considerably reduced. Farmers perceived that the storage of grains after frying reduced the storage pest attack very effectively. Though cheaper and effective for storage method, this practice is done for consumption purpose only. This practice is highly feasible for the small and marginal farmers."

Thus, fried pulses could also mean pulses being fried for storage reasons. And therefore, the other aspect is that the entry is also for pulses which, though fried, need to be undergone the cooking methods so as to consume them. Which means they aren't ready-to-eat items.

Having seen so, I would come to the arguments that despite addition of salt and spices, the impugned product would fall under the words 'fried pulses'. We have seen that the entry earlier covered roasted pulses. Then fried pulses were sought to be covered. Thus, the entry covers activities of roasting and frying. The applicant now wishes to convey that the entry also covers activities which as per the applicant are directed to *make the product marketable*. The issue, therefore, is whether pulses which have been applied salt and spices after frying would stand covered by the entry. The proposition which the applicant seeks to make does not come out, even feebly, when one looks at the words used for the purposes of the entry. The activities, as mentioned above, are clear - *roasting and frying*. The intention of the legislature is clear and cannot be expanded without sanction. Different manufacturers' try out different spices or condiments in differing proportions alongwith salt to make the product a hit with the consumers. In the application, the ingredients are informed as *Choicest Roasted Peas, Edible Oil, Iodized Salt, Chilly Powder, Pepper, Cumin Powder, Dry mango Powder, Cinnamon, Anise, Cloves,, Coriander, Black Salt, Asafoetida*. With such varied ingredients as above, it could fairly be observed that the impugned product is much more than mere fried pulses. It has become a ready-to-eat item of snacks which is advertised as being "*Any time crunchy. All time fresh*". Thus, crunchiness and taste is the USP of the product. And this comes with the selection of the ingredients and not just the oil for frying. In view thereof, I am not inclined to accept the arguments of the applicant that the impugned product with salt and spices would stand covered by the words 'fried pulses'. The applicant has cited a number of judgments to support his claim that the addition of salt and spices would not take away the product from falling within the scope of the words 'fried pulses'. However, there are a catena of judgments of the Hon. Supreme Court and the High Courts which lay down that the different processes applied to a commodity amount to manufacture if, by the application of the processes, the said commodity is known as a commercially different and distinct commodity. In the present case, the commodity is distinctly known in the market as 'Masala Peas' and the applicant, too, admits the same.

I would refer herein to a determination order No.DDQ-1171/143/B-77 dt.17.06.1972 in the case of M/s. Maharashtra Food Products wherein the applicant purchased shelled groundnuts and sold them in packets after the activities of roasting, salting and skinning of the groundnuts. The claim of resale of the applicant was disallowed as the aforesaid activities of



roasting, skinning and salting of groundnuts would be a manufacturing activity. It was specifically observed that the goods purchased and the goods sold do not fall in the same entry.

The point to be noted is that the aforesaid determination order should lay to rest the arguments of the applicant that merely adding masala, salt, etc. does not stop the product from being covered by the entry. While I refer to this decision, I need to be quick to point out that though the said product was held as a 'Farsan', the then entry for 'farsan' did not speak of a notification enlisting the items to be 'farsan' specifically. Therefore, no parity as regards the entries can be drawn but the point about a different commodity coming into existence by application of the processes of roasting and salting needs to be taken note of.

Having seen thus, I find that there is no other specific schedule entry which covers the impugned product. In view thereof, the product finds placed in the residuary schedule entry E-1 of the MVAT Act, 2002, thereby taxable @12.5%. I would now turn to the third product placed for determination thus :

MASALA SING

The applicant claims that the product 'Masala Sing' is Shing Bhajia and would squarely fall in entry 17 of the notification relating to Farsan under schedule C-94. Alternatively it is claimed that the same is an oil seed under the schedule entry C-68 of the MVAT Act, 2002. I would deal with each of the claims thus :

As regards the first claim, I have to say that, as mentioned earlier, the entry C-94 for 'farsan' covers only those 'farsan' which have been notified. The ingredients of the impugned product, as mentioned on the packing, are Roasted Peanuts(90%), Edible Vegetable Oil, Sugar, Spices(3%) (Chilli, Black Pepper, Cumin, Dry Mango Powder, Cinnamon, Ani seed, Clove, Coriander, Black Salt, Asafoetida). In the notified 'farsan' items (as reproduced hereinafter), one doesn't find an express mention of the impugned product or for that matter groundnuts. However, the applicant insists that the impugned product is covered by the description appearing at sr.no.17 of the notification - "All kinds of Bhajias". Since 'bhajias' are a very common food item, at the very first instance, the argument of the applicant to claim likeness of 'masala sing (groundnut)' to a 'bhajia' is obviously incorrect. Nevertheless, I would explain my point. Bhajias, also known as Pakoras or Bhajjis, are a fried Indian snack. It consists of a preparation involving a batter mainly of rice and gram flour (chickpea flour) which is mixed with onions or potatoes or other vegetables including leafy vegetables. The other ingredients would be salt, chillies, spices or other condiments, herbs. The onions or potatoes or the vegetables whose bhaji is to be made are either rolled into balls or slices thereof are properly dipped into the batter of flour and spices and then fried until golden. Thus, we have bhajis of onion (kaanda bhaji in Marathi), potato, palak (spinach leaf), etc. The impugned product does not involve dipping of the groundnut into a batter of gram flour like a bhajia. However, even if it was so dipped in a batter and fried, the impugned product could



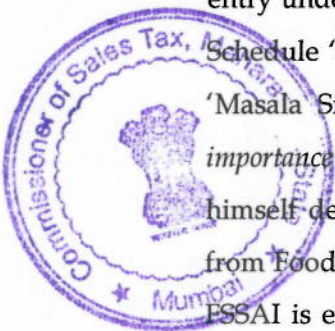
never be called a 'bhajia' as is commonly known. The freedictionary defines a 'bhaji' thus - "*an Indian savoury made of chopped vegetables mixed in a spiced batter and deep-fried*". A bhajia or pakora could never be understood as being a groundnut which is dipped in some flour OR as the present case, a groundnut to which are added ingredients such as Sugar, Spices(3%) (Chilli, Black Pepper, Cumin, Dry Mango Powder, Cinnamon, Ani seed, Clove, Coriander, Black Salt, Asafoetida). When one asks for a bhajia, none would offer products such as the impugned 'masala sing'. Without deliberating any further, I would determine that the impugned product is not the popular Indian snack of 'bhajia'.

The other argument is that the impugned product is an oil seed as covered by the entry C-68. The entry reads thus :

Oil seeds, that is to say:- (i) Groundnut or Peanut (<i>Arachis hypogaea</i>);

I do not deny that a groundnut is an oil seed. However, an oil seed would not surely mean a groundnut with ingredients such as Roasted Peanuts(90%), Edible Vegetable Oil, Sugar, Spices(3%) (Chilli, Black Pepper, Cumin, Dry Mango Powder, Cinnamon, Ani seed, Clove, Coriander, Black Salt, Asafoetida). One cannot possibly extract oil from a groundnut to which the above ingredients have been applied. An oilseed would not be advertised as "*Any time crunchy. All time fresh*". When one desires an oilseed, the impugned 'masala sing' would not be offered and not even as a substitute.

Another important point is that the entry 68 in Schedule C of the MVAT Act,2002 is based on the goods as mentioned in section 14 of the Central Sales Tax Act,1956 (CST Act). The section is for '*goods of special importance in inter-State trade or commerce*'. The commodities considered to be so are certain cereals, coal, cotton, crude oil, iron and steel, sugar, liquefied petroleum gas for domestic use, etc. Each of the aforementioned commodities are properly specified. Section 15 of the CST Act specifies the restrictions and conditions with regard to tax on sale or purchase of declared goods within a State. The restriction with regard to tax rate is such that the Sales Tax laws of a State shall not impose a tax on these declared goods at a rate higher than the rate for these goods as specified under the CST Act. I bring attention to this aspect of 'declared goods' as certain 'Oil seeds' are also one of the goods of special importance in inter-State trade or commerce and accordingly are found enumerated in clause (vi) of section 14. The corresponding entry under the State Sales Tax law to keep taxes at par with the CST rate is found in entry 68 of Schedule 'C' of the MVAT Act,2002. It is best not to visualize that a proprietary snack item as 'Masala Sing' could ever have been in contemplation for being treated as '*goods of special importance in inter-State trade or commerce*'. Further, it cannot be lost sight of that the applicant himself declares on the package that it is a proprietary food item manufactured under licence from Food Safety and Standards Authority of India (the FSSAI). The point to be noted is that the FSSAI is established not to monitor/regulate use of 'oil seeds' but for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. The impugned product not



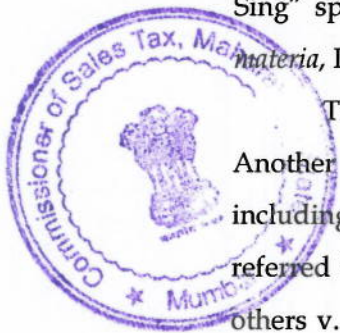
being an 'oil seed' but a snacks item, the registration under the FSSAI can be understood. Despite all this, the applicant prefers to lay claim contrary to his own treatment to the product.

The claims about applicable schedule entries being inherently fallacious, I refrain from deliberating any further. It is seen that there is no specific schedule entry which covers the impugned item. In view thereof, the product gets placed in the residuary schedule entry E-1, thereby liable to tax @12.5%.

I would now look at the case laws which the applicant wishes to rely upon.

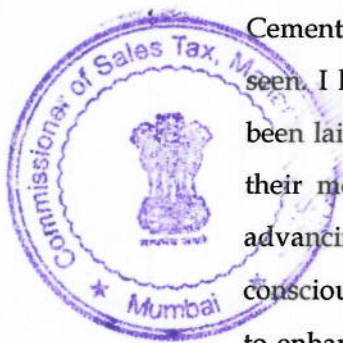
The issue in Agarwal & Co. (cited supra) was whether skimmed milk powder would be covered by the entry "Milk, whole or separated or constituted". The applicant has cited the Hon. MSTT decision in Trupti Foods. The citation thereof is not given. However, I find that there is a decision of the Hon. MSTT in Trupti Foods in Second Appeal Nos. 1345 to 1347 of 2002, decided on March 15, 2010, wherein the issue was whether the expression 'sold under a brand name' used in Schedule entries cited therein means sold under a registered brand name. The issue in India Gypsum Ltd. (cited supra) was whether gypsum board was covered by the words "gypsum in all its forms". The issue in La Bela Products (cited supra) was whether 'beauty spots' (auto sticking bindies) were covered by the word "kumkum". The issue in Neulife Nutrition Systems (cited supra) was whether drinks prepared from certain powders could be treated as 'beverages'. The issue in Chedda Marketing (cited supra) was whether "sunglasses" were covered by the words 'Spectacles, Correctives, Protective or other' as notified for the schedule entry for "medical devices and implants". The issue in Samruddhi Industries Ltd. (cited supra) was whether the product Ghamela was covered by the notification under the schedule entry for industrial inputs and packing material. Such are not the issues in the present case as the entries herein are only for a few items of 'farsan' which have been notified or for 'fried pulses' or 'oil seeds'. And we have seen above that the impugned product and 'gold finger' are very distinctly separate items. Same applies to the "Masala Peas" and "Masala Sing". The very names "Masala Peas" and "Masala Sing" speak for themselves. Therefore, no parallels could be drawn. The facts not being *pari materia*, I refrain from elaborately discussing and differentiating the ratios of these cases.

The applicant cites the case of J. K. Cotton Spinning And Weaving Mills Ltd. And Another (cited supra) for stressing that modern society interest to be taken into consideration including new facts and new situation. I have perused the said case. The Hon. Apex Court has referred to observations in an earlier decision of the Court in the Senior Electric Inspector and others v. Laxmi Narayan Chopra, [1962] 3 S.C.R. 146 thus - "*....the maxim contemporanea exposito as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. Further, it has been observed that in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if*



the words are capable of comprehending them....". The applicant has also cited the case of Bharat Sanchar Nigam Ltd. & Anr Vs. Union Of India & Ors. (cited supra) for stressing on the same lines as the above case of J. K. Cotton Spinning And Weaving Mills Ltd. And Another (cited supra). The Hon. Apex Court had observed that *"The modern legislature makes laws to govern a society, which is fast-moving. It is aware of the changing concepts of the emerging times. The law adapts itself to social, economic, political, scientific and other revolutionary changes. Traditionally, a contract for carriage of goods or passengers is by roadways, railways, airways and waterways. This is associated with carriage of tangible goods. Such a carrier has no right over the goods of the customer and does not effect transfer of right to use any goods used by the carrier for goods. On this analogy, the Petitioners carry messages. They are only carriers and have neither property in the message nor effects any transfer to the subscriber. The advancement of technology should be so absorbed in the interpretation that this method of carriage of message should also be understood as carriage of goods and not a transfer of a right to use goods, if any....."* Both the above cases are not applicable herein as here the legislature has carved out entry for 'farsan' in the lower tax bracket of 5% and further has consciously decided to notify only certain items which could be considered as 'farsan'. It shows the intention of the legislature to restrict the concessional rate to only a few commodities. And if we see one of the items which has been notified then the mere name of the same ('gold finger') speaks for itself. The notified item is aptly described and understood by it's very name. And we have seen that the impugned product of 'Chataka Pataka' has no resemblance whatsoever to the hollow tube-like playful item which has been notified. The same applies even to the claim as regards 'fried pulses'. Thus, even as regards the products "Masala Peas" and "Masala Sing", the entries are also very clear in conveying the scope thereof. "Masala Peas" is a distinct commercial commodity. As regards "Masala Sing" then it is not a 'bhajia' and also not an oil seed. A groundnut with spices and other ingredients could by no remote possibility mean to be an 'oil seed'. Therefore, the above case laws cannot be cited to include something which was never included in the first place.

The applicant has also cited two other case laws. First is Industrial Coal Enterprises (cited supra) to stress that interest which advances the object to be preferred. And the other is India Cements Ltd. (cited supra) to stress that if plain meaning not clear, object of notification to be seen. I have to reiterate again that all the three schedule entries in respect of which claim has been laid to are very distinct and clear and no outside considerations could be had to interpret their meaning and scope. Concepts such as modern society and changing times or interest advancing the object would not be the considerations here as here the lower tax bracket has been consciously granted only on specified items which are easily understood and there isn't any need to enhance the scope of the words. As in the case of a 'gold finger', the same was notified and going by what it is, the impugned 'Chataka Pataka' cannot be forcibly meant to fall thereunder. A commercially distinct commodity as a 'Masala peas' could not be treated as 'fried pulses'. And 'Masala Sing' could never mean to be a 'bhajia' or an 'oil seed'. Doing so would mean expanding the scope of the notification and extending concession without a mandate therefor. And it is



always a rule as laid down by the Hon. Courts that where the words are clear, no external considerations would govern interpretations.

05. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect to the determination order, if the claims as regards applicable schedule entries are not acceptable. There are three products and from the discussion above, it is seen that no claims as made by the applicant were convincing. The first product was 'Chataka Pataka' and it was claimed that the same is covered by the description 'goldfinger'. The item 'goldfinger' is understood by its very name as resembling a finger when inserted onto a finger. 'Masala Peas' also was a distinctly known commercial commodity than mere fried pulses. 'Masala Sing' could never have been referred to as a 'bhajia' or an 'oil seed'. Thus, the applicant was content applying his own reasoning when the schedule entries claimed applicable did not give out any misleading interpretations. The entries were not in the least ambiguous. Oil seeds, bhajias, pulses, goldfinger were known items which should not have been confused with. I find that no convincing case for favourable consideration of the request for prospective effect is made out. And as is the case, a request for prospective effect is always weighed in terms of the ambiguity of provisions, misguidance, and confusion as regards interpretation. We have seen that a similar product as 'Chatka Pataka' was not regarded by the market as being 'goldfinger' or 'gathia'. Further, snack items as 'Masala Sing' are not treated by any as being 'oil seeds' or 'bhajia'. Therefore, I am not inclined to accept the request for prospective effect.

06. In the circumstances, it is determined thus -

ORDER

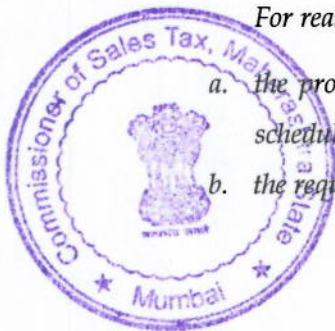
(under section-56 (1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2012/Adm-6/43/B- 2

Mumbai, dt. 9/11/2015

For reasons as discussed in the body of the order, it is herewith determined that -

- a. the products 'Chataka Pataka', 'Masala Peas - Vatana' and 'Masala Sing' fall in the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby taxable @12.5%.
- b. the request for prospective effect is rejected.




(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI