

- Read:** 1. Application dt.18th July,2007 from M/s. Monginis Foods Pvt. Ltd. holder of VAT TIN 27460268385 V.
2. Application dt.18th July,2007 from M/s Delicia Foods holder of VAT TIN 27270330327 V.
3. This office letter dt.18.9.07 calling both the applicants for hearing on dt. 09/10/07.
4. A written submission dt. 12.10.07 from M/s. Monginis Foods Pvt. Ltd.
5. A written submission dt. 12.10.07 from M/s Delicia Foods.
6. Letter dt. 17.10.07 from M/s. Monginis Foods Pvt. Ltd.

Heard: Shri. T.M. Chaatpar, Advocate attended the hearing on behalf of both the applicants.

PROCEEDINGS

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

No.DDQ-11-2007/Adm-2/25/B-1

Mumbai, dt. 6.11.2007

No.DDQ-11-2007/Adm-2/26/

This is a set of two applications posing a common question for determination. The question as well as the details could be reproduced as follows:-

Sr. No.	Name of the applicant	Address of the applicant	Invoice No. & Date	Products put up for determination
1.	M/s. Monginis Foods Pvt. Ltd.	Off Link Road, Andheri(West), Mumbai-400 053.	Invoice No.15880 dated 12.06.2007	1. Cakes and Pastries 2. Oth. Bakery a) Paneer Croissants b) Paneer Finger Roll c) Veg. Burger d) Chicken Burger e) Pan Pizza Veg. f) Conniza g) Chicken Puff Roll h) Pan Pizza Chicken i) Chicken Cutlet j) Garlic Chicken(Cornetto) k) Chicken Manchurian Roll l) Chicken Samosa Puff m) Chicken Puff n) Paneer Plait
2.	M/s Delicia Foods	29, Vishal Industrial Estate, Village Road, Bhandup (West), Mumbai-400 078.	Invoice No.2429 dated 09.06.2007	d) Cakes and Pastries e) Oth. Bakery a. Khari Dips

The applicants have charged sales tax @ 4% on the sales of the above products effected under the invoices mentioned as above. The applicants seek determination of the question as follows :-

“Whether the products cakes, pastries and other bakery products like Khari Dips, Paneer Finger Rolls, Pan Pizza, Veg. Burger would be covered by the schedule entry C-107(11)(f) of the Maharashtra Value Added Tax Act?.”

One of the applicants, M/s Monginis Private Limited, in his written submission has stated that, he desires determination only on the products mentioned in the Table in Para 1 of this order. As for the other products, Pizza Bread, Patties, Samosa, Bread and Tea Time puff which are mentioned in the invoice submitted for determination, the applicant has stated that, out of the five products, tax is paid @ 4% on Pizza Bread, Patties and Samosa. As for bread and tea time puff, no tax is paid on it presuming them to be tax-free. The applicant has further stated that, in case the tax paid by him is incorrect, the determination be given on the aforesaid products also.

02. FACTS OF THE CASE

The applicants are duly registered under the MVAT Act, 2002 and are manufacturers of various products such as breads, farsan, cakes, pastries and savouries like Paneer Finger Rolls, Pan Pizza, Veg. Burger, etc. On the sales of cakes, pastries and various savouries, they discharged tax liability by paying sales tax @ 12.5% under Schedule E till 31st Jan, 2006.

The Govt. of Maharashtra effected certain changes in the schedule entries w.e.f. 01.02.2006. Entry 107(11) of Schedule C which attracts 4% sales tax was completely recast by expanding its scope. Sub-entry (f) of the entry C-107(11) was worded as under:

"Food Stuffs and Food Provisions of all kinds including raw, semi cooked or semi processed foods, ready to mix and ready to cook preparations excluding ready to serve foods".

The following Explanation was also added immediately after sub-entry (f):

Explanation- The items referred to in clause (a) to (f) will not be covered by the scope of this entry when those are served for consumption.

Sub-entry (g) was placed immediately after the Explanation to which obviously the Explanation is not applicable.

In the light of this new sub-entry (f) under Entry 107(11), it was felt by the applicants that, cakes, pastries and various savouries being ready to eat food stuffs sold by the applicants and not served for consumption would attract 4% S.T. under schedule entry C-107(11)(f) read with the Explanation. To confirm the belief about the rate of tax applicable to their products, the applicants sought clarification by making an application to the Sales Tax Department. The applicants were informed vide letter dt.6.5.2006 that the rate of 4% S.T. would be applicable to their products as follows :-

Sr.No.	Name of the applicant	Products
1.	M/s Delicia Foods	1. Cakes 2. Pastries
2.	M/s. Monginis Foods Pvt. Ltd.	1. Cakes 2. Pastries 3. Paneer Finger Roll 4. Pan Pizza 5. Veg. Burger

Acting on the above clarification, the applicants started collecting S.T. @ 4% on sales of cakes, pastries and other savouries and discharged the tax liability accordingly in the returns filed by them.

One of the applicants, M/s. Monginis received communication dated 20.06.2007 requesting the applicant to take note of the determination order No.DDQ-11-2005/Adm-5/76/B- 3 Mumbai, dt. 31/05/2007 in the case of M/s. Parampara Food Products. The copy of the order was also enclosed. In this order, certain ready to eat food items were held as covered by the schedule entry E-1, attracting 12.5% S.T. w.e.f 01/02/2006 while rejecting the dealer's contention that, these food items are covered by Entry 107(11)(f).

This communication dt.20.06.2007 received from the Sales Tax Office has created doubts in the mind of the applicants about the rate of tax applicable to their products which were earlier clarified as attracting S.T. @ 4% under entry C-107(11)(f). To clear the doubts about the exact rate applicable to the products, the present applications are being made.

03. CONTENTION

After going through the determination order passed in the case of M/s. Parampara Food Products (cited supra), the applicants still feel that the products in question posed for determination covered by invoices enclosed would be covered by the entry C-107(11)(f) as

'Food Stuff'. Their contention is that, the impugned products would not be covered by the scope of the words 'Ready to Serve' meant for the purposes of the exclusion provided specifically in the entry itself. This exclusion pre-supposes that, but for the exclusion not only 'ready to serve food' but other food items ready to eat would have also been covered by the scope of the Entry C-107(11)(f).

The contention of the applicants in support of the products being covered by the schedule entry C-107(11)(f) is reproduced as follows :-

- The whole issue boils down to the interpretation of the words 'Food Stuffs' appearing in the entry which words are disjoined with other words following in the entry i.e. 'food provisions of all kinds including raw, semi-processed, foods ready to mix and ready to cook preparations, by the use of the word 'and'.
- This Entry of Foodstuffs is not new to Sales Tax Legislation in the State of Maharashtra. Similar Entry with same phraseology existed right from 01.01.1960 when Bombay Sales Tax Act, 1959 was enacted. The Entries being E-6 from 01.01.1960 to 30.06.1981, C-II-27 from 01.07.1981 to 30.09.1995 and C-II-11 from 01.10.1995 to 31.03.2005. The common phraseology used was:

"Food stuffs and Food Provisions of all kinds including raw, semi- cooked or semi-processed foods".

- The word 'Food Stuff' appearing in the same phraseology in all the above entries from time to time for last more than four decades was always interpreted in broader sense covering all the articles and substances in finished condition ready for eating by human beings for nourishment in the body. Never upto now was a narrower meaning given as in the order passed in the case of M/s. Parampara Food Products (cited supra i.e.

"Food Stuffs not ready for consumption and not finished products which cannot be consumed directly without further process of cooking".

- The narrower meaning is given by applying the principle of 'Noscitur-a-Sociis' which was never applied so far probably because the principle was not applicable to the setting of the entry as after the words 'Food Stuffs', the word 'and' was used in all the entries including the present entry under Mah. Vat Act. In view of use of the word 'and', a view can be taken that the word 'Food Stuff' is to be independently interpreted, thus not taking colour from the phrase appearing after the word 'and'.

Had there been a "comma" instead of 'and' after the words 'Food Stuffs' and also instead of the words 'including' if there had been a coma, then at the most the principle would have been applicable for which support can be taken from the ruling of our own High Court given in the case of M/s. Gordhandas Tokersy (52 STC-381) wherein this principle was applied to the following phraseology:

'E-19-Perfumes, depilatories and cosmetics'

In this case, it was held by the High Court that Sandalwood and Sandalwood Oil which has fragrance will not be covered by the word 'Perfume' by giving 'perfume' analogous meaning similar to depilatories and cosmetics which are applied to body of human beings. In view of this consistent view held for more than 45 years, no departure is called for by relying on the principle, which is of doubtful application to the setting of the entry. Consumers and dealers conversant with the Sales Tax Legislation in the State of Maharashtra have always given broader meaning to the term 'food stuffs' covering even ready to eat foods items and not restricting to the food substances requiring cooking before use by human-beings. The use of the word including has only further expanded the meaning of Food stuff.

- The departure also appears to have been justified in the order of M/s. Parampara Food Products (cited supra) because concept of 'ready to serve food' to be taxed at last stage is not there in the Maharashtra Vat Act as there is no such Notification like one issued under Section 8A of the 1959 Act. No doubt, this concept of "ready to serve" food to be taxed at last stage was introduced in the BST Act w.e.f. 01.04.1984 by issue of Notification reproduced in the Determination Order. But earlier to that although there was no such exclusion in the entries dealing with food stuffs, but on the contrary included specifically in the entry. In this connection, it may be pointed out that there are number of orders passed by the Commissioner of Sales tax even for the period prior to 01.04.1984, where Commissioner has not taken narrower meaning by applying the principle of Noscitur-a-Soccis but has always given wider meaning to include even items of food which can be directly eaten by human-beings without applying any process i.e. ready to eat items being held as 'Food Stuffs' .Such orders are:

- DDQ-1181/304/B-8 dt.22.01.1982 'Kachori' held as being covered by the then schedule entry C-II-27 in the case of M/s. Sharma & Sons.
- DDQ-1184/4/B-8 dt.06.11.1984 Food Parcels not served but M/s. Everest Caterers sold on counter C-II-27.
- DDQ-1183/Adm-5/241/B-6 Chinese ready food purchased dt.09.11.1984 and sold C-II-27.

This shows that the concept of 'ready to serve' and 'ready to eat' food was there in the Act right from its inception.

- Further, Hon. Commissioner in the order passed in the case of M/s. Parampara Food Products (cited supra) has equated the phrase 'Ready to Serve Food' with 'ready to eat food' when both the concepts have always been differentiated in the Sales Tax Legislation. Both the phrases have different connotation and the Legislature has specifically excluded ready to serve food from the scope of the main entry. The Executive Authority cannot act and perform the functions of Legislation and hold that, both the types of food are excluded from the scope of the entry when only one type is excluded.
- It may further be noted that, the "Explanation" appearing in the entry C-107(11) is after the sub-clause (f), but before sub-clause (g). According to the Commissioner, this explanation does not apply to sub-entry (f). If that would have been the case, then Legislature would have placed the explanation after sub-clause (e) leaving sub-clause (f) & (g) both out of the scope of the Explanation. This also amounts to legislating which is not the function of the Executive Authority. The Explanation to the entry plays very important role in the interpretation of the Entry 107(11) because it shows that 'Food Stuffs' which can be directly consumed and are in finished condition are covered by the main entry but such food items when served for consumption by dealers which will be naturally in Hotels etc. then only such items get excluded. But for the exclusion by "Explanation", items ready to eat in finished condition will be covered by the scope of the entry.
- In short 'Food items which are ready to serve' are excluded from the scope of the main entry itself and thus leaving ready to eat food items covered by the main entry, but then when these ready to eat items covered by the main entry are served for consumption then these items get excluded by virtue of the "Explanation" clause. Thus, there are two exclusions available in the entry-one fully without any

condition and other partially under certain circumstances of service for consumption. But for these exclusions, all food items would have been covered by the main entry. Both the exclusions- one from the main entry and the other by virtue of the 'Explanation' point out that, the word 'Food Stuffs' includes ready to eat items i.e. items of food in ready and finished conditions and not raw materials requiring cooking and process as held by the Commissioner.

- Further, it may be pointed out that entry C-107(11)(f) has used two words: Food Stuff and Food Provisions. Both the words cannot be given the same meaning. Both have different connotations. Legislature has wisely used both the words. The Hon. Commissioner has given the same meaning to both the words by holding that, only substances which go into preparation of the food proper are covered by the word 'Food Stuff'. However, such substances are very well covered by the word 'Food Provisions'. The Legislature never legislates redundantly. By giving the same meaning to the word 'Food stuff' and 'Food Provisions', Hon. Commissioner has held indirectly that word 'Food Provisions' is redundant, in the entry which is not called for.
- It is therefore, prayed that, the Hon. Commissioner may be pleased to hold the sale of the products posed for determination as being covered by the entry C-107(11)(f) liable to S.T. @ 4%. This would be in keeping with the clarification earlier issued to M/s. Monginis and thereby reviewing the Determination Order passed in the case of M/s. Parampara Food Products (cited supra).
- **PRAYER UNDER SECTION 56(2)**
Alternatively, if for any reasons, the Hon. Commissioner comes to the conclusion that, the impugned products are covered by the schedule entry E-I liable to S.T. @ 12.5%, then discretion vested by virtue of provisions of section 56(2) may be exercised and prospective effect to the order may be given, so as to protect the liability at least of the applicant who was specifically informed by the Commissioner that, the products are covered by the entry C-107(11)(f) attracting 4% S.T. The applicant has acted on the clarification given by the Commissioner and started implementing the same by collecting 4% S.T. on such sales. There are various precedents which support such protective orders passed when dealers are guided by the clarifications given to individuals or to Trade Associations who had

sought clarifications from the Commissioner of Sales tax. The applicant was prompt in seeking clarification and has acted bonafide on such clarification by collecting lower rate of tax.

The above prayer has been made by both the applicants.

04. HEARING

The case was taken up for hearing on 09/10/2007. Shri. P.M Chhatpar (Advocate) attended on behalf of both the applicants.

At the outset, he stated that the applications have been filed under section 56 (1)(e) and section 56(2) of the MVAT Act. The applicants are manufacturers of pastries and cakes. The applicants have collected tax @ 12.5% on the products from 1.4.2005 to 31.1.2006. The schedule entry C-107 (11)(f) was amended w.e.f 1.2.06 and therefore, as soon as the schedule entry was introduced, the applicants sought clarification regarding the rate of tax to be paid by them on the impugned products. Clarifications were issued to both the applicants stating therein that, the aforesaid goods were covered by the schedule entry C-107(11)(f). Accordingly, the applicants started collecting tax @ 4% on the products. Thereafter, one of the applicants, M/s. Monginis received a letter from the Sales Tax Dept. that, the tax be paid as per the determination order in the case of M/s. Parampara Food Products (cited supra).

The applicants have therefore filed application for a statutory order u/s 56 of the MVAT Act, 2002. The Advocate stated that the determination order in the case of M/s. Parampara Food Products (cited supra) is not applicable as the products sold are not ready-to-serve but are ready-for-sale products. The difference between "ready-to-serve" and "ready-to-sale" products is that, "ready-to-serve" mean ready-to-serve in a hotel. He argued that his products are not sold in a hotel and therefore they are not covered by the exclusion clause. The term 'ready-to-serve' implies hot food sold in a hotel and their food is not hot and is not covered by the exclusion clause. He referred to the DDQ in the case of M/s Alibaba Restaurant (9.11.84) wherein such a view was held. He also argued that the DDQ in the case of M/s. Parampara Food Products (cited supra) wrongly applied the principle of 'noscitur a sociis' as the schedule entry C-107 (11)(f) contains the word 'including'. Had the entry been, "foodstuffs, food provisions, raw food, semi-cooked food" then the application of the principle would have been proper. He referred to the

judgement of the Supreme Court in the case of M/s Tamil Nadu Kalyanam mandapam (135 STC 480) wherein the word 'including' has been explained.

05. OBSERVATIONS

I have gone through all the facts of the case. I would first deal only with the products mentioned in the table in Para 1 of this order. The schedule entry for consideration before me is as follows :-

C - 107 (11) (f)	Food stuffs and food provisions of all kinds including raw, semi-cooked or semi-processed foods, ready to mix and ready to cook preparations excluding ready to serve foods, <i>Explanation.</i> – The items referred to in clause (a) to (f) will not be covered by the scope of this entry when those are served for consumption.	01.02.2006 to till date
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Prior to dealing with the issue, I shall first explain the minutiae of schedule entry C-107(11)(f) . The schedule entry C-107(11)(f) covers 'foodstuffs and food provisions' and is a wide entry including raw, semi-cooked or semi-processed foods, ready to mix and ready to cook preparations. But this entry comes with two exclusion clauses.

- The first exclusion clause provided in the main entry which excludes 'ready-to-serve' food from it.
- The Explanation provided to the schedule entry which explicitly excludes 'food served for consumption' from the scope of the schedule entry.

It is interesting to note that the schedule entry for foodstuffs and food provisions under the BST Act, carried only one exclusion through which 'ready-to-serve' food was excluded from the entry. However, under the VAT Act, the schedule entry for foodstuffs and food provisions excludes two categories—'ready-to-serve' food and 'food served for consumption.' The Explanation through which 'food served for consumption' is excluded is made applicable to the sub-clauses (a) to (f) of sub-entry (11) of entry C-107 and is very plain in its meaning. *The Legislature through the Explanation has excluded all the items specified in the sub-entries if they are served in hotels, eating houses, restaurants and similar entities.* This interpretation is unambiguous and there cannot be two opinions about it. Now, there is also an exclusion to 'ready-to-serve' food provided in the main

entry. The Explanation already excludes the items ' food served for consumption in a hotel etc and therefore the only logical construction that can be placed on 'ready-to-serve' food is that it implies food which is 'ready-to-eat'. One of the prime principles of interpretation is that one should give meaning to each and every word in a statute- nothing is redundant in a statute. The two exclusions provided in the entry carry a meaning and a purpose. Both the exclusions i.e exclusion to 'ready to serve food' from the main entry and the exclusion provided in the Explanation render themselves to construction and they imply the following:

Thus,

- The exclusion of 'Ready to serve foods in the main entry' excludes food ready to eat in any place.
- The exclusion of 'Food served for consumption' as given in the explanation excludes food served in a hotels, restaurants, eating houses, refreshment rooms, boarding establishments and other similar entities.

Keeping the aforesaid interpretation in mind, I shall now proceed to decide the classification of the products. The products sold by the applicant are cakes, pastries, paneer finger rolls, veg. burgers etc. All these products are food which is ready for consumption. They are not in raw or unfinished form. The advocate, in the course of hearing himself admitted that, all the products are ready-to-eat products. Therefore, there seems to be no dispute as to the similarity of these products to the ones decided in the DDQ in the case of M/s Parampara Food Products (cited supra). They are all 'ready-to-serve ' food i.e food which is ready for consumption and as it is specifically excluded from the main entry , they would not be covered by the schedule entry C-107(11)(f).

As mentioned earlier,the main schedule entry C-107(11)(f) specifically excludes the category of 'ready to serve foods' i.e food which is ready-to eat. Here, the allusion to ready-to-serve foods should be construed as food which is ready to eat where nothing more needs to be done to make it ready for the table. Such foods are specifically excluded from the purview of schedule entry C-107(11)(f). Also, the products which are specifically mentioned under the entry belong to a specific category and thus speak for themselves. They are :

- Raw foods
- Semi-cooked foods

- Semi-processed foods
- Ready-to-mix foods
- Ready-to cook foods

The common factor in the genres listed above is that *all these foods are not ready-to-eat foods and some process needs to be done on them to make them ready for consumption. This observation is corroborated by the fact that the entry specifically excludes ready-to-serve foods.* The specie of 'ready-to-eat foods' or 'ready -to-serve' foods do not belong to the genus of 'raw, semi-processed, semi-cooked foods'. The products sold by the applicants are cakes, pastries, paneer finger rolls. These are ready to eat products. They are not 'raw, semi-processed, semi-cooked, ready-to-mix or ready-to-cook food'. Nothing needs to be done to them in order to make them palatable. It is a 'ready-to-serve food' and therefore, it would not come under schedule entry C-107(11)(f).

The applicants have argued that, 'food items which are ready to serve' are excluded from the scope of the main entry itself and thus leaving ready to eat food items covered by the main entry, but then when these ready to eat items covered by the main entry are served for consumption then they get excluded by virtue of the Explanation clause. As per the contention of the Advocate, there are two exclusions available in the entry – one fully and other partially. I disagree with this contention. The Advocate through his argument seeks to make a distinction between ready-to-eat foods and ready-to-serve foods which is artificial and contrived. Food is not necessarily served only in a hotel. Food is also 'served' in a home. The word 'serve' means to 'set food before'. The food can be set before a person in a home as well as in a hotel.

Also, the applicants further contend that, 'food items ready to serve in a hotel ' are excluded twice from the entry- once from the main entry and then from the Explanation. This averment is difficult to accept as this means that the category 'Food items which are ready to serve' in the main entry has no meaning and is redundant ! One of the prime principles of interpretation is that one should give meaning to each and every word in a statute- nothing is redundant in a statute. The two exclusions provided in the entry carry a meaning and a purpose. The Supreme Court in the case of M/s Grasim Industries (128 STC 349) has made the following observations which are pertinent, to say the least.

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too

much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the Legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the Legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the Legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner (1946) 6 Moore PC 1 "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. .'... ..

In the DDQ in the case of M/s. Parampara Food Products (cited supra) it was observed that, the Explanation to the schedule entry C-107(11) is not applicable to the clause (f). This observation was apparently made under the impression that the schedule entry C-107 (11)(f) does not include any 'ready-to-eat' foods. A look at the schedule entry shows that, there are two exclusion clauses: the exclusion of 'ready-to-serve' foods in the main entry and the exclusion of 'food served for consumption' vide the Explanation. The presence of two exclusion clauses has to be explained as they both occur with a purpose. The exclusion clause in the main entry excludes 'ready-to-eat' foods which is a tautology for 'ready-to-serve' foods as they both imply the same. As mentioned earlier, the 'ready-to-serve' foods excluded from the main entry excluded those foods which are ready and served in any other place than a hotel i.e a shop etc. The Explanation to the schedule entry C-107 (11)(f) excludes the ready foods which are served in a hotel, restaurant, eating house etc.

I now proceed to determine the rate of tax on the products, Pizza Bread, Patties, Samosa on which the applicant i.e M/s Monginis Pvt. Ltd. pays tax @ 4% and also on Bread and Tea Time puff, which the applicant believes to be tax-free. The applicant has stated that he does not want determination on these products but the said determination nevertheless be given in case the tax rates charged by him are incorrect. I will do so accordingly.

It is seen that, the items 'Samosa' and 'bread' are not covered by the invoice submitted for determination. Therefore, the question of determining the rate of tax on them does not arise. Pizza Bread is specifically covered by schedule entry C-73 and Patties is notified as an item of 'Farsan' for the purpose of schedule entry C-94. Therefore, the applicant is correctly charging tax @ 4%. As for "Tea Time Puff", I do not agree with the applicant that it is tax-free. Though the applicant has not informed the schedule entry vide which the product could be tax-free, it is felt that, the applicant presumes it to be covered by the schedule entry A-7. The schedule entry A-7 covers only 'Bread'. The entry is reproduced as follows:

A-7	Bread (excluding pizza bread), in loaf, rolls or in slices, toasted or otherwise except when served for consumption.	1.4.2005 onwards
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The schedule entry A-7 covers only bread. 'Tea-time puff' is not bread but is a preparation of bread, ghee and sugar. A 'puff' is a kind of light pastry and is certainly not 'bread'. In the absence of any specific entry, it would be covered by the schedule entry E-1 and would be taxable @ 12.5%.

06. JUDGEMENTS

The applicant has referred to certain judgments in support of his contention.

- (i) **DDQ in case of Alibaba Restaurant (9.11.84).**
- (ii) **MSTT decision in case of Chitale Bandhu v. State of Mah.[5 MTJ 318 SA No. 442 of 1990 dt. 20/9/1991.**
- (iii) **DDQ in case of M/s Sharma and Sons (1181-304/B-8 dt 22.1.82).**
- (iv) **DDQ in case of M/s Everest Caterers (1184-4/B-8 dt 6.11.84).**

The judgements cited at no (ii) and (iv) have been dealt with in the DDQ in the case of M/s. Parampara Food Products (cited supra) and I do not deem it necessary to deal with them again. The DDQs cited at (i) and (iii) also had similar matters before them for

determination i.e whether kachori sold would be ready to serve food and therefore excluded from the entry for 'foodstuffs and food provisions'. In all the above decisions, the words '**ready to serve**' were in the context of food served in any eating house, hotel, refreshment room or boarding establishment or any part thereof which is generally accessible to members of the public at large. The then schedule entry for 'foodstuffs and food provisions' which was schedule entry C-II-27 was amended w.e.f 1.4.84 and the 'ready-to-serve' foods were specifically excluded from it. This was done because of the simultaneous amendment to entry 22 of Schedule C Part II dealing with food and non-alcoholic drinks served for consumption in an eating house and further ready -to- serve food was brought to taxation at last stage with effect from 1.4.84 by issue of notification under section 8A. However, it may be noted that there is a significant difference between the then schedule entry for 'foodstuffs' (C-II-27) and the present VAT schedule entry C-107(11)(f). In schedule entry C-II-27, the exclusion clause for 'ready-to-serve' foods has to be necessarily interpreted as 'food ready-to-serve 'in a hotel . Thus, the restricted meaning attributed to 'ready-to-serve foods in these orders was mainly because of the context in which the words 'ready-to-serve' were introduced in schedule entry C-II-27. This interpretation is no longer applicable as the scope of schedule entry C-107(11)(f) is very clear now. *Unlike the then schedule entry C-II-27 which has only one exclusion clause ,the schedule entry C-107(11)(f) has two exclusion clauses now, which is the exclusion provided in the main entry and the exclusion provided through the Explanation.* As mentioned earlier, the exclusion clause provided in the main entry excludes 'ready-to-eat' foods and the exclusion provided through the explanation excludes the 'food served for consumption in a hotel.' The exclusion provided through the explanation is analogous to the exclusion provided in the old entry C-II-27 and is interpreted accordingly. And the exclusion provided in the main entry excludes the 'ready-to-eat' foods which are excluded, notwithstanding the place of service.

07. PRAYER U/S 56(2) OF THE ACT

Having dealt with the main issue, I now proceed to deal with the prayer made by both the applicants u/s 56(2) of the MVAT Act. It is prayed that alternatively, if for any reasons, the Hon. Commissioner comes to the conclusion, that the impugned products are covered by Schedule Entry E-I liable to S.T. at 12.5% then discretion vested by virtue of

provisions of section 56(2) may be exercised and prospective effect to the order may be given, so as to protect the liability as they were specifically informed by the Commissioner that, the products are covered by the entry C-107(11)(f) attracting 4% S.T. It is stated that, the applicant has acted on the clarification given by the Commissioner and started implementing the same by collecting 4% S.T. on such sales.

In the course of hearing the applicants were told to cite precedents where under the prospective effect was granted on the basis of a clarification given earlier. The applicants have therefore, submitted a written submission comprising the judgements relied upon by them in support of their prayer for prospective effect. The judgements cited by the applicants are as follows :

1. **DDQ - 1196/Adm-6/156/B-1 dt 2.6.97** passed in the case of M/s. Sanghi Gases. In this case, the applicant had sought clarification from the department regarding rate of tax on Industrial Gases, and in response to the letter, the applicant was intimated that the rate of tax was 10%. In a later DDQ, the Commissioner held the rate of tax as @13%. However, after referring to the clarification dt 8.4.96 given by the department, the liability of the applicant was protected up to 30.9.96.
2. **DDQ -1194/Adm-5/12/A-8 dt. 17.05.95** in the case of M/s. Dawood and Sons and **DDQ-1197/Adm-5/20-45-66/B-6 dt. 23.09.97** in the case of M/s Roopkala Export Corporation (India) and Others . In both these orders, prospective effect was given on the basis of the applicant being misguided by two Circulars issued by the Commissioner.

I have gone through the written submission of the applicant given in connection to their prayer u/s 56 (2) of the MVAT Act. The section under consideration is reproduced below:

Section 56:

.....(2) The Commissioner may direct that the determination shall not affect the liability under this Act of the applicants or, if the circumstances so warrant, of any other person similarly situated, as respects any sale or purchase effected prior to the determination...

Under this section, the Commissioner is empowered to protect the liability of the applicant prior to the determination order. This is a discretionary power of the

Commissioner to be exercised judicially and from the provisions of section 56(2) of the Maharashtra Value Added Tax Act, 2002, it is clear that, grant of prospective effect to a determination order depends on the facts and circumstances of each case. 'Genuine statutory misguidance' is one of the basis of granting prospective effect. In the present case, both the applicants were informed that, the products sold by them would be covered by the entry C-107(11)(f) attracting 4% S.T, after which, the applicants have collected tax @ 4%. However, it need be noted that in the case of M/s Monginis Pvt Ltd, the clarification was sought on and accordingly given only on the following products :

- Cakes
- Pastries
- Paneer Finger Roll
- Vegetable Burger
- Pan Pizza

The applicants has not sought clarification on the rest of the products like Paneer Croissants, Chicken Burger etc. In the case of M/s Delicia Foods the clarification was sought and given on the following products :

- Cakes
- Pastries

Thereafter, the DDQ dated 31.05.2007 passed in the case of M/s. Parampara Food Products (cited supra) was passed. One of the applicants then received communication dated 20.06.2007 enclosing copy of the above DDQ and informing about the applicability of the DDQ to the products of the applicants.

This being the case, I am inclined to accept the prayer of the applicants that, the prospective effect may be granted in view of the specific clarification issued to them. The facts in the determination order in the case of M/s Sanghi Gases (cited supra) are squarely applicable to the present case. However, the applicants are granted prospective effect upto the date of the order in the case of M/s. Parampara Foods Products (cited supra) only on the products on which the clarification was given vide letter dt 6.5.2006. The rest of the products were never put forth for clarification and authority giving the clarification had no occasion to apply his mind to it. Therefore, no prospective effect is granted to the said products.

08. In the context of the deliberations held hereinabove, I pass the order as follows:-

ORDER

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

No.DDQ-11-2007/Adm-2/25/B- 1
No.DDQ-11-2007/Adm-2/26/

Mumbai, dt. 6.11.2007

a) The question posed for determination is answered as follows:-

Name of the products	Schedule entry	Rate of Tax	Period
• Cakes • Pastries • Oth. Bakery products such as a. Paneer Croissants b. Paneer Finger Roll c. Veg. Burger d. Chicken Burger e. Pan Pizza Veg. f. Conniza g. Chicken Puff Roll h. Pan Pizza Chicken i. Chicken Cutlet j. Garlic Chicken(Cornetto) k. Chicken Manchurian Roll l. Chicken Samosa Puff m. Chicken Puff a) Paneer Plait Paneer Finger Roll b) Pan Pizza c) Veg Berger • Khari Dips	E-1	12.5%	1/4/2005 onwards
Pizza Bread	C-73	4%	1/4/2005 onwards
Patties	C-94	4%	1/4/2005 onwards
Tea-time puff	E-1	12.5%	1/4/2005 onwards

b) **M/s Monginis Foods Pvt Ltd** : The present order is made prospective with effect upto the date of the order in the case of M/s. Parampara Foods Products i.e up to 31.05.2007 for the following products :

- Cakes
- Pastries
- Paneer Finger Roll
- Vegetable Burger
- Pan Pizza

Accordingly, the rate of tax applicable to the products, mentioned above from 1/2/2006 (i.e. the date from which the schedule entry C-107(11)(f) came into existence) up to 31/5/2007 i.e. the date of the determination order in the case of M/s. Parampara Food Products would be 4% by virtue of the protection accorded.

- c) **M/s Delicia Foods** : The present order is made prospective with effect up to the date of the order in the case of M/s. Parampara Foods Products i.e up to 31.05.2007 for the following products :

- Cakes
- Pastries

Accordingly, the rate of tax applicable to the products, mentioned above from 1/2/2006 (i.e. the date from which the schedule entry C-107(11)(f) came into existence) upto 31/5/2007 i.e. the date of the determination order in the case of M/s. Parampara Food Products would be 4% by virtue of the protection accorded.

- d) As for the rest of the products viz Paneer Croissants, Chicken Burger, Conniza, Chicken Puff Roll, Pan Pizza Chicken, Chicken Cutlet, Garlic Chicken (Cornetto), Chicken Manchurian Roll, Chicken Samosa Puff, Chicken Puff, Paneer Plait and Khari Dips , they are taxable @ 12.5 % from 1.4.2005 onwards.

SANJAY BHATIA
Commissioner of Sales Tax,
Maharashtra State, Mumbai.