Read :- 1) Application dt. 25/10/2005 from M/s. Madhwa Industries., holder of Sales Tax Registration Certificate No. 444705/S/621.

2) This office letter dt. 08/02/2007 calling the applicant for hearing on 20/02/2007.

Heard:- Shri Ashok Chandak, Chartered Accountant attended on behalf of the applicant on 21/2/2007.

PROCEEDINGS

(Under section 56(1)(c) of the Maharashtra Value Added Tax Act,2002)

No.DDQ-11-2005/Adm-5/90/B-3 Mumbai,dt.26.4.2007

An application is received from M/s. Madhwa Industries., (hereinafter called as the "applicant") of Rallies Plot, Amravati, District-Amravati-444705 requesting determination of the question as follows:-

" whether the applicant is manufacturer of split form of pulses in terms of section 2(15) of the Maharashtra Value Added Tax Act,2002 and therefore entitled for grant of certificate of entitlement in accordance with the order issued under section 8 read with section 89 of the Maharashtra Value Added Tax Act,2002.

02. FACTS OF THE CASE

The applicant is a registered partnership firm having its unit of converting whole grain of pulses into dal. The applicant is registered under the Bombay Sales Tax Act, 1959. The unit, being a new unit set up in the backward area of the State of Maharashtra, had applied for grant of Certificate of Entitlement to the District Industries Centre (DIC), Amravati under the Package Scheme of Incentives, 1993. The said application was approved by the DIC and a recommendation to the Deputy Commissioner of Sales Tax, Nagpur for issue of Certificate of Entitlement under section 41 of the Bombay Sales Tax Act,1959 vide letter dt. 26/03/2003 was sent by the DIC. The DIC granted Certificate of Eligibility No. DIC/AMT/PSI/93/EC-231/574 dt. 26/03/2003 for Sales Tax Incentives as well as Capital Incentives.

The Dy. Commissioner of Sales Tax, Nagpur had returned the proposal to the District Industries Centre vide letter No.EC/G/2/3264 dt. 22/07/2003 with the reason that in terms of section 2(7) of the Bombay Sales Tax Act,1959 read with rule 3 of the Bombay Sales Tax Rules,1959, the activity of obtaining Dal, i.e., conversion of whole grain of pulses to split form do not amount to manufacturing.

After receipt of the said letter, the applicant vide letter dt. 04/08/2003 addressed to the District Industries Centre, Amravati, had requested to grant sales tax incentives under Para No. 5.1 (1) (c) Package Scheme of Incentives,1993 i.e. interest free loan. The said application remained unattended and incentives were not sanctioned by the District Industries Centre for grant of interest free loan.

With effect from 01/04/2005, the Maharashtra Value Added Tax Act,2002 came into force. Section 2(15) of the Maharashtra Value Added Tax Act,2002 now defines the term 'manufacture' as under:-

'manufacture', with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods."

Under the provisions of the Maharashtra Value Added Tax Act,2002 and the Maharashtra Value Added Tax Rules,2005, there is no exclusion from the term 'manufacture' as was there under Rule 3 of the Bombay Sales Tax Rules. In view of the above change in the position of law, it was felt by the applicant that, he is entitled for incentives under Para 5.1(1)(A) or (B), i.e.to avail of incentives either as exemption or deferment of tax. Therefore, the applicant, vide letter dt. 15/04/2005 addressed to the General Manager, District Industries Centre, Amravati requested to DIC that, a Certificate of Eligibility and Entitlement be granted so as to avail of the incentives under Package Scheme of Incentives, 1993 read with section 8 and section 89 of the Maharashtra Value Added Tax Act,2002.

The District Industries Centre, Amravati vide letter dt.17/05/2005 requested the Deputy Commissioner of Sales Tax, Nagpur to inform as to whether under the Maharashtra Value Added Tax Act,2002, the process of converting whole grain pulses into Dal (split form of pulses) amounts to manufacture or not so that necessary formality for further action in the matter can be taken.

The matter was followed by the applicant's counsel with the Dy.Commissioner of Sales Tax, Nagpur who verbally informed the counsel to take up the issue with Dy. Commissioner of Sales Tax (Incentives & Enforcement), Maharashtra State, Mumbai. Accordingly, the counsel for the applicant vide letter dt.07/06/2005 requested the Dy. Commissioner of Sales Tax (Incentives and Enforcement), Maharashtra State, Mumbai to issue necessary guidance in the matter so that the applicant can get the due benefit under issue Package Scheme of Incentives,1993.

The Joint Commissioner of Sales Tax (Incentives & Enforcement), Maharashtra State, Mumbai vide letter No.PSI-2005/54/Adc-13/B-185 dt.20/07/2005 received by the counsel of the applicant on 22/08/2005 directed the applicant to seek a determination from the Commissioner of Sales Tax under section 56 of the Maharashtra Value Added

Tax Act,2002 as to whether the process of converting whole grain of pulses into Dal (split form of pulses) amounts to manufacture.

Accordingly, this applicant is filed for determination under section 56(1)(c) of the Maharashtra Value Added Tax Act,2002.

03. MANUFACTURING PROCESS OF DAL

The process of manufacturing as submitted by the applicant is as follows :-

1) Toor is cleaned by chalna machine for taking out mud pieces, sand, sticks.
2) Then such cleaned toor is again passed through another chalna to sort out and get separate low graded toor which is called and known as Mukan, which is much light in weight. It is mainly used as cattle food. If pulse is manufactured from Mukan, then such manufactured pulse, generally being of very low and inferior quality, is not used in daily food.
3) Such cleaned toor after sorting out mukan is brought on drying platform for sun-drying for 1 day to take and moisture contents therein.
4) After sun drying, dried toor is passed through roller machine with the help of elevators. Roller machine is a cylindrical roll having outer layer consisting of carforandum. Roller machine helps to dehusk such sun-dried toor. This toor after passing through roller machine has to be passed through chalana so as to separate chuni, broken toor, and whole grain of toor. All these products are collected separately in respective chambers. At this stage, 10% toor gets dehuked which is further carried on to oil spraying through conveyor machine. Now this whole grain toor is to be stored for 24 hours so that husk gets softened after the application of oil.
5) Except sun drying, same procedure is to be applied to dehusk the toor which still has about 4% to 5% husk. At this stage also, there is application of oil and this whole grain is kept for 12 hours so as to soften the husk.
6) Same procedure as fourth and fifth step is followed so as to dehusk toor.
7) Now a final roll is given to the whole grain as collected at the sixth step. After this roll, we get quasi finished goods name as Gota. Gota means nearly 98% dehusked toor which is available for further processing so as to make premium quality of pulse called "Fatka Dal".
8) Roll dal as mentioned above in fourth step is collected separately at each stage right from fourth stage to seventh stage. Oil is applied to this dal so that husk present on the dal gets softened. Such dal is kept in chamber for at least 12 hours after application of oil.
9) Roll dal is now kept for full day in open space for sun drying. After drying, water and oil is applied. Such roll dal contains some moisture.
10) Roll dal is again kept on drying platform for sun drying for full day to vanish its moisture content completely and to loosen the husk of roll dal.
11) This roll dal is then passed through a separate roller machine for dehusking so as to get the final product. This final product of roll dal is graded in 5 qualities as following:-

1.	Sawa No.	-	Premium roll dal
2.	Mini Sawa No.	-	Medium roll dal
3.	Barik Sawa No.	-	Low grade roll dal
4.	Tukadi	-	Broken pieces of dal
5.	Chuni	-	Cattle feed

All the above mentioned final products except chuni are then polished with the spraying of oil and water within specially designed conveyer called polish varam. Polish varam are made from wooden material like teak or Malaysian saal with specific inner diameter having leather fixed on diameter. The varam provides superior finishing and shining to the finished product.

12) Gota, a quassi finished product as we see in the 7th step undergoes same process as mentioned in the ninth and tenth step.

13) This dried Gota is now passed through elevator for splitting. This splitted toor dal is called as Fatka. The fatka dal now passes through a chalana so as to separate following as per market demand:-

1. Bold Fatka Dal
2. Medium Fatka Dal
3. Low Fatka Dal
4. Tukdi
5. Chuni
6. Whole grain which do not split

All the finished goods except chuni and whole grain are stored at separate chambers for further polishing process with the help of polish varam as mentioned in the 11th step. Remaining nearly 10% whole grains again undergo reprocessing as per the fourth step.

All the different kinds of quality and graded dal and tukdi are then ready for packing in gunny bag with plastic liner for marketing after weighing on electronic weighing scale.

Chuni collected at each stage is sold as cattle feed.

Approximately 70% to 74% finished goods realizes from whole processing in the form of Dal and about 24% to 28% realizes in the form of chuni and Bhusa (Turfle) which is used entirely as cattle-food. About 2% is irrecoverable loss due to mud, sticks, dust, etc,. Normally, the whole process of realizing Dal requires 5-6 days. In the whole process, the shape of the original raw material is totally changed. Also, out of the realized product, some remains for human consumption and some for cattle.

All above manufacturing processes are carried with various machineries operating on power.

04. CONTENTION AND HEARING

The applicant is of the opinion that, the activity of converting whole grain of pulses into Dal (split form of pulses) amounts to manufacture. It is submitted that, the whole grain of pulses are declared goods. Under the Bombay Sales Tax Act, the whole grain of pulses was covered under entry 9(1) of Schedule A and was exempted from tax. In the opinion of the applicant, under the Bombay Sales Tax Act,1959 also, the above activity was covered by the term 'manufacture' defined in section 2(17) of the Bombay Sales Tax Act,1959. However, only because of the exclusion provided in Rule 3(xviii) of the Bombay Sales Tax Rules, the activity was not considered as 'manufacture' in the State of Maharashtra. The Supreme Court in the case of Rajasthan Flour Mills Association v/s. State of Rajasthan (91 STC 408) has held that flour, maida and sooji derived from wheat are different and distinguished from wheat. The Supreme Court of India in a series of decisions has laid down the principle as to how to determine whether the activity is manufacturing or not. The most important test in this regard was laid down by the Supreme Court as to whether a new commercial commodity comes into existence as a result of process. The applicant submits that in his case, the resultant product i.e. Dal (split form of pulses) is different than the whole form of pulses. It is also known accordingly. In this regard, the applicant also relies on the following decisions of the Supreme Court– 1. KAK Anwar & Co. [108 STC 258 (SC)]

2. Ashirwad Ispat Udyog [112 STC 207 SC]

Therefore, the applicant submits that, the activity is a manufacturing activity. The copy of the Certificate of Eligibility No. DIC/AMT/PSI/93/EC-231/6728 dt. 08/10/2002 for Capital Incentives has been submitted with this application.

The case was fixed for hearing on 20/02/2007. Shri Ashok Chandak, Chartered Accountant attended on behalf of the applicant. He argued that, the process of converting whole grain of pulses into dal amounts to manufacture as defined in section 2(15) of the Maharashtra Value Added Tax Act,2002 and therefore entitled for grant of Certificate of Entitlement under order issued under section 8 of the Maharashtra Value Added Tax Act,2002 read with section 89 of the Maharashtra Value Added Tax Act,2002. He further argued that, the Tribunal in a number of cases has held that, the activity of converting pulse into dal amounts to manufacturing. In the absence of a rule in the Maharashtra Value Added Tax Rules as was there under the Bombay Sales Tax Rules, the activity will amount to manufacturing. He cited the following cases in support of his argument :-

1. M/s. Kishore Food Product Pvt Ltd. (App. No. 131 of 1997 decided on 8th March,2002)
2. M/s. Rentio Foods Pvt Ltd vs. The State of Maharashtra (Appeal 69 of 2002 and Misc. Appl. No. 85 of 2002 decided on 13th December,2002

05. OBSERVATIONS

I have gone through all the facts of the case. The question for consideration before me is - **"***whether the process of converting whole grain of pulses into Dal (split form of pulses) amounts to manufacture in terms of section 2(15) of the Maharashtra Value Added Tax Act,2002."*

The above activity is required to be interpreted in terms of the provisions pertaining to the definition of "manufacture" under the Maharashtra Value Added Tax Act,2002. Hence, let me first reproduce the sub-section 2(15) which pertains to the definition of "manufacture" under the Act:-

(15) "manufacture", with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods;

I have already reproduced hereinabove, the process of converting whole grain of pulses into Dal. The issue as regards whether a particular activity amounts to manufacturing or not has been the subject matter of a catena of decisions by the various Courts. A similar issue as in the present case was discussed in the following cases before the Maharashtra Sales Tax Tribunal(MSTT) :-

[1] M/s. Yogesh Agro Industries (Appeal Nos. 125-127 of 1997 decided on 9th July, 1999):-

It was held that, the definition of the word 'manufacture' is wide in the Bombay Sales Tax Act, 1959. The processing activity does alter the nature, character and utility of the product being processed. Therefore, the conversion of whole grain of pulses into dal amounts to manufacture.

[2] M/s. Kishore Food Product Pvt Ltd. (App. No. 131 of 1997 decided on 8th March,2002):-

The same view as above was expressed placing reliance on the judgment in the case of M/s. Yogesh Agro Industries (Appeal Nos. 125-127 of 1997 decided on 9th July, 1999).

[3] M/s. Rentio Food Pvt Ltd vs. The State of Mahrashtra, (Appeal 69 of 2002 and Misc. Appl. No. 85 of 2002 decided on 13th December,2002:-

It was held that, the activity of preparing split dal from whole grain of pulses should be regarded as manufacture. It was observed that, the split/separated dal which is finally produced though called as pulse like the input, yet it is placed before the consumers as a different commodity. There is certainly a change in commercial perception of the commodity and therefore the activity does bring into existence a different commercial commodity.

06. I have already reproduced hereinabove the process of manufacturing of split dal. The various processes to which the raw material i.e., 'toor ' is subjected to are cleaning, sorting, sun-drying, dehusking, oil application, splitting etc,. After application of the above processes, the output obtained is of the following type :-

70 to 74% -dal
24% to 28% -chunni and bhusa
2% -loss due to mud, sticks

The chunni and bhusa so realized is used as cattle-food. By passing through the various stages, the shape of the original raw material is changed. Thus, it can be said to have undergone '*processing and treating*' to form a new commercial commodity.

In view of the cases decided by the MSTT, I am of the opinion that the presence of the words "*processing, treating*" in the definition of 'manufacture' in the Act renders the activity of the applicant as amounting to 'manufacture'. The above could be summarized to mean that, the impugned process of converting whole grain of pulses into dal is an activity covered by the definition of 'manufacture' as per section 2(15) of the Maharashtra Value Added Tax Act,2002.

07. In the present proceedings, I would also have to comment on the issue of eligibility of the applicant to get the benefit of the Package Scheme of Incentives, 1993 w.e.f. 1.4.2005. The applicant's activity being regarded as not amounting to 'manufacture' in terms of the then section 2(17) of the Bombay Sales Tax Act, 1959 read with rule 3 of the Bombay Sales Tax Rules, 1959, he was not granted a Certificate of Entitlement. In this regard, I have to mention that, eventhough after the introduction of Value Added Tax Act, 2002 w.e.f. 01/04/2005 the applicant's activity is held as 'manufacturing', he is not eligible for grant of entitlement certificate. This is due to the fact that, the aforementioned scheme having expired, the applicant would not be eligible to get the benefit of the same. The applicant's argument that, in view of the changed provisions pertaining to 'manufacture', he should be entitled to get the benefit of the aforementioned scheme w.e.f. 1/4/2005, would, therefore, not survive.

08. In view of the above, I pass an order as follows :-

ORDER

(Under section 56(1)(c) of the Maharashtra Value Added Tax Act,2002)

No.DDQ-11-2005/Adm-5/90/B-03 Mumbai,dt. 26.4.2007

The first part of the question, as regards, *"whether the applicant is manufacturer of split form of pulses (Dal) in terms of section 2(15) of the Maharashtra Value Added Tax Act,2002"* is herewith answered in the affirmative, but the second part of the question as to "whether the applicant is entitled for grant of certificate of entitlement in accordance with the order issued under section 8 read with section 89 of the Maharashtra Value Added Tax Act,2002." is answered in the negative.

(B. C. KHATUA)

Commissioner of Sales Tax,
Maharashtra State, Mumbai.