

Read:- 1. Application of nil date from M/s. Monarch Industries, holder of Registration Certificate No. 421401/S/129.
2. This office letter dated 25/01/2006 calling the applicant for hearing on 01/02/2006.

Heard:- Shri Ratan Samel, advocate attended alongwith Shri Punit Anam, partner.

PROCEEDINGS

(Under Section 56 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/52/B-6

Mumbai, dt. 30/04/2006

An application is received from M/s. Monarch Industries, B/3, Amba Bhavan, 2nd Floor, 84-B Devji Ratanshi Marg, (Broach Street), Mumbai-400 009. The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002 carrying on the business of processing dhania by dehusking the same and reselling dhana dal to the various customers. The applicant desires to know the following :-

- 1) Whether dehusking dhania and adding proportionate quantum of salt for its long preservation amounts to a manufacturing process as defined under section 2(15) of the Maharashtra Value Added Tax Act, 2002, and whether the applicant's purchases of dhania from registered dealers and selling dhana dal amounts to resale as contemplated under section 2(22) of the Maharashtra Value Added Tax Act, 2002?
- 2) Under which schedule entry of Maharashtra Value Added Tax Act, 2002, the product dhana dal is classified and what is the rate of tax applicable to the same?

02. DETAILS SUBMITTED ALONGWITH THE APPLICATION

- 1) Brief facts and arguments.
- 2) Copy of sale Invoice No. 842 dt. 28-06-2005.
- 3) Copy of purchase invoice.
- 4) Proof of payment of fees of Rs. 100/-.
- 5) Copies of the various judgments relied upon by the applicant.
- 6) Copy of the Circular No. 197/31/96-CX dated 15-04-1996 of the Central Board of Excise & Customs, New Delhi regarding classification of Dhana dal/ Dhania Ki dal/ Coriander Seeds sold in pouches.
- 7) List of spices under the purview of the Spices Board.

03. BACKGROUND OF THE CASE

The applicant purchases coriander seeds, commonly known as dhania seeds either from the states of Rajasthan, Madhya Pradesh or from the local market. The process of preparation of dhania dal from dhania seeds could be seen thus :-

The dhanial seeds are cleaned to remove the impurities such as stones, sticks etc. Then the cleaned dhanial seeds are put in a dehulling machine for removing the husk. Thereafter, dehulled seeds are mixed with water and put on rest for a period of eight hours in order to achieve uniformity. Then the seeds are put in a dehulling machine which is known as "Huller" for removing the bran from the seeds. The bran is separated and the kernel is mixed with salt water. The kernels are either dried in sunlight or put on a roasting machine. This roasted/dried product is known in the market as "dhanial dal". It is packed in gunny bags for its marketing.

The husk removed in the process is used as cattle feed. The applicant mentions the following uses of dhanial dal in his application

- 1] Dhanial dal is used as a spice or mixed with other spices.
- 2] It is also used as a mouth freshener.
- 3] It is also used as a medicine since it has digestive characteristics.
- 4] It is harmless as only salt is mixed in it.

04. CONTENTION AND HEARING

The case was fixed for hearing on 01-02-2006. Shri Ratan Samel, advocate alongwith Shri Punit Anam, partner attended. They argued that, dhanial dal is a form of spices and is duly covered by the schedule entry A-51(iv) upto 31.03.2006 and alternatively by the schedule entry C-91(b) after 01/04/2006. The applicant submits that the process of dehulling dhanial seeds for removing the dal portion with a simple process does not amount to manufacture. It should be treated as a non manufacturing process. The applicant submits that dhanial dal being coriander seeds, is covered by the schedule entry 51 (iv) which reads "*Coriander seeds, fenugreek and parsley (suva) whole or powdered*" for the period from 1st April, 2005 to 31st January, 2006 and even from 01/02/2006, it remains unchanged till 31/03/2006 and hence exempt from tax.

With effect from 1st April, 2006 the applicant submits that his product will fall under schedule entry C-91(b) which reads thus,- "*For the periods starting on or after 1st April,2006, chillies, turmeric, coriander seeds, fenugreek and parsley (suva) whether whole or powdered.*"

The applicant submits that the above entries i.e. entry 51 (iv) and C-91(b) are specific entries and therefore the specific entry will prevail over the general entry. The applicant alternatively, submits that if the product is treated as not falling under the entries A-51(iv) and C-91(b), then the product dhanial dal being a form of spices, should be treated as covered by the schedule entry C-91(a) which reads "*spices of all varieties and forms including cumin seeds, hing, asafetida, aniseeds, saffron, pepper and coffee seeds.*"

The above entry is of general nature. Hence, the applicant submits that if the product dhanial dal is not treated as dhanial seed (coriander seed) then it should be definitely classified under spices of all varieties and forms for the reasons that, the essential characteristics of the dhanial seed are retained in the dhanial dal, including its taste, smell, and use to some extent. The applicant submits that, in the common parlance dhanial dal is known as one of the spices.

To buttress his point, he has submitted the list of spices published by the Spice Board mentioning coriander seeds as spice. He further submits the circular issued by the Central Excise Board of Excise & Customs, New Delhi classifying dhanial dal, dhanial ki dal and coriander seeds under heading 09.03 of the Central Excise Tariff which pertains to spices.

In yet another alternative submission, it is pleaded that the product may also be classified under schedule entry C-83 which reads thus,- "*Roasted or fried pulses including gram*". The applicant submits that dal, gram

Lastly, it is argued by the applicant that, if it is held that the product is not covered by any of the schedule entries A-51(iv), C-91(b), C-91(a) or C-83 and treated as covered by the residuary entry E-1 then, the applicant's past liability be protected.

05. OBSERVATIONS

I have carefully gone through all the facts of the case. The entire process of making dhanial dal from dhanial seed has been discussed in the para on "process".

The stages involved are :-

- 1) cleaning and removing impurities
- 2) putting in a dehusking machine
- 3) mixing the dehusked seeds with water
- 4) putting in a dehulling machine for removing the bran from the seeds
- 5) mixing the kernel with salt water
- 6) drying the kernels in sunlight or in a roasting machine
- 7) packing in gunny bags and selling the roasted/dried product as "dhanial dal".

A look at the above process and one can see how coriander seed/ dhanial seed is transformed into dhanial dal. The raw material used is dhanial seed which after processing gets transformed into dhanial dal. The questions raised by the applicant are of the nature as in :

(a) Whether the process is a manufacture?

(b) If manufacture, under which schedule entry and what would be the rate of tax?

The applicant has cited a number of judgments in support of his arguments for the activity of preparing dhanial dal from dhana as not being manufacturing. The decisions cited are from the following cases:-

1. Sri Vinayaka Oil Industries v. State of Karnataka [Bangalore High Court] (1993) (91 STC 253)
2. (1980) 46 STC 63 – Dy.Commr.of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v/s. Pio Food Packers (Supreme Court)
3. (2003) 28 MTJ 187 (MSTT) M/s. R. K. Patel & Co. v/s. State of Maharashtra
4. (1981) 47 STC 124 (Supreme Court) Chowgule & Co Pvt. Ltd v/s. Union of India
5. AIR 1991 SC 2222 Collector of Central Excise vs. Rajasthan State Chemical Works
6. (1996) 13 MTJ 58 : 98 STC 403 – (SC) Commissioner of Sales Tax, Maharashtra State, Bombay v/s. Rajshree Electronics
7. 63 STC 239 (SC) : Sterling Foods v/s. The State of Karnataka & Another
8. (1997) 106 STC 26 (Bombay High Court) Commissioner of Sales Tax, Maharashtra State, Bombay v/s. Ruby Surgical & Allied Products Pvt. Ltd.

A similar issue has been raised earlier also. We could have a look at the concerned cases and the decisions taken therein :-

06. JUDGMENTS

1] M/s. Meghraj Vidaram & Co (S.A. 535 /536/78 decided on 23.4.79) : The facts of this case being

The assessee was a dealer in kirana and provisions. During his assessment for the period 27.10.73 to 13.11.74 and 14.11.74 to 3.11.75, the Sales Tax Officer held that the dhana dal sold by the assessee was covered by the scope of the then residuary entry E-22 of the Bombay Sales Tax Act, 1959. The assessee had contended that the dhana dal would be covered by the scope of the entry A-10 of the Bombay Sales Tax Act, 1959. Tribunal held that, dhania dal would not be a pulse within the meaning of entry A10. Hence, the dhana dal was held as covered by entry E-22 of the Bombay Sales Tax Act, 1959

2] M/s. D. K. Foods & Chemicals Pvt. Ltd., (DDQ-1191/Adm-5/034/B-2 dt. 2.1.1992): In this case, the applicant had sought determination as regards the correct rate of tax applicable to the sale of "roasted dhania dal". The applicant's buy dhania, the same is then split and roasted and dhania dal (roasted) is sold. The applicant contended that dhania was exempted under schedule entry A-10 of the Bombay Sales Tax Act, 1959 and as separated/split/roasted dhania would continue to be covered by schedule entry A-10 of the Bombay Sales Tax Act, 1959 roasted dhania should be held as covered by the schedule entry A-10 of the Bombay Sales Tax Act, 1959. The alternative contention put forth by the applicant was that, dhania would be pulses within the schedule entry A-8 of the Bombay Sales Tax Act, 1959.

Both the above contentions as regards the schedule entries A-10 and A-8 were rejected. Accordingly, it was held that, "dhania dal (roasted)" falls under the scope of residuary schedule entry C-102 of the Bombay Sales Tax Act, 1959.

3] M/s. Ujwal Industries [DDQ-1196/Adm-5/159/B-5 Mumbai, dt. 17.10.1996] : The issue involved in this case was " whether the process carried for preparation of 'dhania dal' out of whole 'dhania' amounts to manufacture within the meaning of section 2(17) of the Act read with rule 3 of the Bombay Sales Tax Rules." The process in brief could be seen thus- Whole dhania was cleaned and put into Katori machine, wherein upper portion is removed and inner portion gets split into two parts, which is known as dal. Turmeric powder and salt is spread on the dal and then it is dried. The dried dal is roasted.

A reference was made to the determination order passed under section 52 on 2.1.1992 in the case of M/s. D. K. Foods & Chemicals Pvt. Ltd., The applicant in that case had preferred an appeal before the Tribunal, however the same being withdrawn by the appellant himself, the decision under section 52 rendered on 2.1.1992 becomes final. Hence, the decision of 2.1.1992 was considered while passing an order in this case.

It was observed that once dhania is converted into dhania dal, it loses its characteristics and value. Dhania and dhania dal cannot be treated as one and the same commodity. It was held that the process of preparing of dhania dal from dhania does amount to manufacture under section 2(17) of the Act.

4] State of Karnataka v. Raghuram Shetty (1981) (47 STC 369): The Supreme Court has held that rice was a distinct commodity from paddy and that the dehusking of paddy into rice involved manufacturing process. The following observations could be seen:

"Only because dehusking is involved in the case of paddy when rice is brought out, we cannot apply the said decision to the case of tamarind seed. It is the quality of the article in question that should be seen. The paddy as an article of commerce has several utilities apart from its being the basis for producing rice. We may also refer to the fact that rice bran oil is one of the products that could be produced from paddy. Rice is an entirely different article both from the point of view of consumption and from the point of view of other utilities when compared to paddy. But here, the situation seems to be altogether different. The people who are dealing with the subject-matter have definitely expressed their opinion that whether prior to the husking or after dehusking, it is the same article.

Since the above decisions at [1], [2], and [3] are based upon the provisions of the Bombay Sales Tax Act, 1959 the first question of the applicant as to whether this activity amounts to manufacture needs to be decided after

including the definitions of "manufacture" and "resale" under the Bombay Sales Tax Act, 1959 and the Maharashtra Value Added Tax Act, 2002.

[1] The definitions of "manufacture" and "resale" as it stood then under the Bombay Sales Tax Act, 1959 and as they stand now under the Maharashtra Value Added Tax Act, 2002 are reproduced herein for comparison. The same are as follows :

[A] MANUFACTURE

Manufacture – Section 2(17) of the Bombay Sales Tax Act,1959	Manufacture – Section 2(15) of the Maharashtra Value Added Tax Act, 2002
"manufacture", with all its grammatical variations and cognate expressions, includes – (a) producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods, or using or applying any such process as the State Government may, having regard to the impact thereof on any goods or to the extent of alteration in the nature, character or utility of any goods brought about by such process, by notification in the Official Gazette, specify (b) cutting, sawing, shaping, sizing or hewing of timber; and (c) refining of oil; (d) Lacquering of polyester film but does not include such manufacture or manufacturing processes as may be prescribed.	"manufacture", with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods;

[B] RESALE

Resale - Section 2(20) of the Bombay Sales Tax Act, 1959	Resale - Section 2(22) of the Maharashtra Value Added Tax Act, 2002
"re-sale", for the purposes of section 7, 8, 8A, 9, 10 and 12 and 13, 13AA, 13B means sale of purchased goods - (i) in the same form in which they were purchased, or (ii) without doing anything to them which amounts, or results in a manufacture, and the word "re-sale" shall be construed accordingly;	"re-sale" means sale of purchased goods - (i) in the same form in which they were purchased, or (ii) without doing anything to them which amounts, or results in a manufacture, and the word "resell" shall be construed accordingly;

There is no difference in the two definitions of resale. The only difference in the two definitions on manufacture is that under the B.S.T Act, the State Government could notify processes amounting to manufacture and processes not amounting to manufacture. However, the extension of manufacturing concept to certain notified processes under the Bombay Sales Tax Act, 1959 would not affect the ratio of the Tribunal judgment in the case of M/s. Ujwal Industries (as cited supra) as the Tribunal had arrived to the conclusion that the process of preparing 'dhanial dal' is a manufacturing process and it is based on the first part of the definition of 'manufacture' under the Bombay Sales Tax Act, 1959, which is congruent with the definition of manufacture as per section 2(15) of the Maharashtra Value Added Tax Act, 2002.

Dhanial seed and Dhanial dal have independent existence. I do not agree with the applicant's contention that the final product has the same use as the raw material, i.e., dhanial seed. The applicant has produced the samples of both the raw and finished products before me. The dhanial seed which is raw in form is without any doubt used as a spice. It has culinary characteristics. This opinion about the dhanial seed being used as a spice finds support in the list of spices under the purview of the Spices Board. The said list confirms the view that the leaf and seed of coriander is used as a spice. This list confirms that the finished product i.e. salted dhanial dal is not used as a spice. It finds use only as a mouth freshener. The applicant accordingly purchases the dhanial seeds and after dehusking and necessary processes, the product is mixed with salt water and later roasted / dried to obtain the final product which is definitely in different form and having different use than the raw material which goes into its making.

Both the raw material, i.e., dhanial seed and the finished product, i.e., dhanial dal are recognized in common parlance and also by the Trade as commercially different commodities.

In the case of M/s. Kashmiri Products vs The State of Maharashtra (S.A.No. 191 to 194 of 1997 dt. 31/07/2002), it was held that dhanial dal and roasted dhanial dal are not the same commercial commodities and hence roasted dhanial dal gets placed in the residuary schedule entry.

I find that the judgments cited by the applicant cannot be made applicable to the present case. The judgments cited by the applicant lay down tests as regards deciding the issue of whether an activity is manufacturing or not. However, there are several judgments deciding the issue for the same product as is being currently discussed i.e. dhanial dal. These specific judgments cannot be ignored.

Thus when there is a direct judgment on the goods in question, the same cannot be overlooked. Hence, it is felt that the judgments cited by the applicant in support of his contention that the activity is not a manufacturing activity cannot be made applicable in the present case.

This, in turn, means that the applicant's question no. 1 being an already decided issue, it requires no further deliberation and thought.

Thus, it is now decided that the process of dehusking dhania and adding appropriate quantum of salt for its long preservation amounts to a manufacturing process as defined under section 2(15) of the Maharashtra Value Added Tax Act, 2002.

Having decided the first question that the applicant's process amounts to manufacture, I proceed to determine the relevant entry for his product.

[2] The applicant has made a multifarious argument as regards to his claim of the appropriate schedule entry under the Maharashtra Value Added Tax Act, 2002. He has put forth his claim as regards the following schedule entries:-

- (i) **Coriander seed** - A-51(iv) upto 31/03/2006 and C-91(b) from 01/04/2006
- (ii) **Spices** - C-91(a)
- (iii) **Pulses** - A-9/A-9A (a) upto 31/03/2006 and C-20 from 01/04/2006 onwards
- (iv) **Roasted or fried pulses** - C-83

I will go through each of the claims in the order as mentioned above.

1] A-51(iv) and C-91(b)

The applicant is of the opinion that his product "dhanial dal" is exempted from tax being classified under the schedule entry A-51(iv).

The entry A-51(iv) is operative from 1/5/05 upto 31/03/2006. It becomes C-91(b) from 01/04/2006 onwards. The schedule entries read thus:-

A-51(iv)	Coriander seeds, fenugreek and parsley (suva) whole or powdered	1.5.05 to 31.3.06	Nil
C-91	(b) For the periods starting on or after 1st April, 2006, Chillies, turmeric, tamarind, coriander seeds, fenugreek and parsley (suva) whether whole or powdered.	As amended on 1/5/2005	4%
C-91	(b) For the periods starting on or after 1st April, 2006,- Chillies, turmeric, tamarind, coriander seeds, fenugreek and parsley (suva) whether whole or powdered.	As amended on 1/2/2006	4%

In the case of **M/s. D. K. Foods & Chemicals Pvt. Ltd., (DDQ-1191/Adm-5/034/B-2 dt. 2.1.1992)**, it was held that, "dhanial dal (roasted)" falls under the scope of the residuary schedule entry C-102. Reliance was placed on the decisions in the cases of M/s. Meghraj Vidaram & Co. and M/s. Jaihind Dhanadal Factory v/s. The State of Maharashtra (S.A.No. 423 to 426 of 1965 dated 9.9.1966), wherein dhanial dal was held as covered by the residuary entry.

The contentions as regards the schedule entries A-10 and A-8 were rejected. Hence, let me look at the entries as they stood then and their corresponding schedule entries under the Maharashtra Value Added Tax Act, 2002.

A-10	Chillies, turmeric, Dhania, Methi and suva, whole or powdered; tamarind, whole or separated (excluding tamarind seed when sold in separated form).	1-4-1984 to 30-4-1992
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It can be seen that there is a difference in the sense that, earlier the entry mentioned the word "dhania" only. However, under MVATA, 2002, the word used is "coriander seed" (dhania seed). Thus even when the word "dhania" was used, dhania dal was decided as not covered by the entry. Hence, now when the legislation itself restricts the scope of the entry to "dhania seed", it follows that dhania dal would not be covered by the entry. The scope of the entry 51(iv) is restricted to the raw form of coriander.

In the case of **M/s. Ujwal Industries [DDQ-1196/Adm-5/159/B-5 Mumbai, dt. 17.10.1996]**, it was held that the process of preparing dhania dal from dhania does amount to manufacture under section 2(17) of the Act. Reliance was placed on the decisions in the case of M/s. D. K. Foods & Chemicals Pvt. Ltd. The applicant had not applied for determination as regards the schedule entry. Hence, no decision as regards schedule entry was reached. However, it was observed that once dhania is converted into dhania dal, it loses its characteristics and value. Dhania and dhania dal cannot be treated as one and the same commodity. Needless to say that the above observations very obviously mean that "dhania dal" would not be covered by the entry for "dhania".

Thus, when there is a direct judgment of the Tribunal as regards the issue of 'dhania dal' not being covered by the entry for "coriander", there arises no need to have any further deliberations on the matter.

The schedule entry very clearly intends to include coriander seed (dhania seed) i.e., the raw material and not the coriander dal i.e., dhania dal. The final product of the applicant is recognized as a dhania dal and not as a seed. The product before its processing was a seed and does not remain so after. Hence, it can be said that the first claim of the applicant as regards the schedule entry A-51(iv) being applicable to the final product, is not acceptable.

2] Schedule entry C-91(a)

Another claim of the applicant is that, the product gets covered by the scope of entry C-91(a) as spices.

The applicant in his contention has claimed that the entry C-91(a) could be made applicable to his product. He submits that if the products are determined as not falling under schedule entries A-51(iv) and C-91(b), the product "dhana dal" being a form of spices should be covered by the entry C-91(a) which reads thus :-

C-91	Spices of all varieties and forms including cumin seeds, aniseed, turmeric and dry chillies.	1.4.05 30.04.05	to	4%
C-91	a) Spices of all varieties and forms including cumin seed, hing (asafoetida), aniseed, saffron, pepper and poppy seeds;	1.5.05 31.01.06	to	4%
C-91	a) Subject to clause (b) spices including cumin seed, hing (asafoetida), aniseed, saffron, pepper and poppy seeds;	1.2.06 onwards		4%

It is not debated that the entry seeks to cover in its ambit spices of all varieties and forms. However, the applicant's final product "dhania dal" is not a spice. I have already mentioned earlier that the Spice Board has recognized only the leaf and seed of coriander as a "spice" and not the dhania dal.

dhania would neither be spices nor oil seeds.

The coverage of Chapter 09.03 under the Central Excise Act is very wide. However, for the purpose of the Maharashtra Value Added Tax Act, 2002 the entry covering coriander seeds being narrow in its scope, the products made from coriander seeds would not be covered by the entry.

The applicant in support of his contention has placed reliance on the circular dated 15.4.96 issued by the Central Board of Excise & Customs, New Delhi, clarifying that dhana dal/ dhania ki dal/ coriander seeds are rightly classified under heading 09.03 of the Central Excise Tariff Act. The order is passed in the year 1996-97 when the heading 09.03 pertained to spices the headings from 09.04 to 09.10 pertain to spices. In this regard, it can be seen that the heading 09.03 pertains to spices and covers even the products of spices. The HSN Explanatory Notes to Chapter 9 defines spices as those which are mainly used as condiments. The chapter note does not require that to be called as spices, such products (including seeds etc.) should be solely used as condiments. Such intention as in Central Excise is not reflected by the schedule entry for spices as meant for the purposes of both the Bombay Sales Tax Act, 1959 as well as the Maharashtra Value Added Tax Act, 2002. The word "spices" used for the purposes of our entry seeks to cover spices which being rich in essential oils and aromatic principles are used as condiments. Hence, the classification in the circular issued by Central Excise cannot be made applicable to this case. A product has to be interpreted as per the provisions of the taxing statute only under which it is being assessed. Hence, the product cannot be regarded as covered by the schedule entry C-91(a) pertaining to spices of all varieties and forms.

The applicant in support of the product being a spice has cited the following case:-

The `State of Andhra Pradesh v. Kajjam Ramachandrai Gari Anantaiah (Hyderabad High Court) [Vol. XII STC 795] : The following observations could be reproduced :-

" What was in contemplation of the Legislature when it enacted item 3 of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957, was to tax the turnover of oil seeds which in common parlance would be taken as oil seeds, but not every seed from which by some process or other oil can be extracted. Coriander, ajwain and sompu are used as spices and are not known as oil seeds and consequently they did not fall within the definition of oil seed mentioned in item 3 of "Schedule IV".

The applicant seems to have overlooked the fact that the subject matter of the above case, which is referred to as spices, is coriander seeds and not dhania dal. I do not contradict the above view that coriander seeds fall under the category of "spices".

In respect of the reliance of the applicant on the above judgment, I have to say that when there is a judgment on a same commodity, it cannot be overlooked and the issue requires no further deliberation.

Hence, the claim of the applicant as regards dhania dal being spices is not acceptable.

3] Schedule entry A-9A and C-20

It is the contention of the applicant that his final product dhania dal is a pulse and would accordingly be covered by the entry A-9 /A-9A upto 31.03.2006 and under entry C-20 from 01.04.2006. The entries could be reproduced thus :-

The entry as it stands today is as follows:

A-9	Cereals and pulses (during the period from 1 st April, 2005 to 31 st 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
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	whole grain, split or broken form and their flour whether sold singly or in mixed form.	
A-9A	During the period from 1 st May,2005 to 31 st March,2006 :- a] Paddy, rice, wheat and pulses in whole grain, split or broken form; b] the flour of wheat and rice including atta, maida, rawa and suji; c] the flour of pulses including besan when sold singly and not mixed with flour of other pulses or cereals.	As amended on 1/2/2006
C-20	Cereals and pulses (with effect from 1 st April,2006 onwards) 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
C-20	During the periods starting on or after 1 st April,2006:- Rice, wheat and pulses in whole grain, split or broken form.	As amended on 1/5/2005
C-37	Flours of cereals and pulses whether singly or in a mixed form including atta, maida, rawa, and suji and besan.	1-4-2005 to 30-4-2005
C-37	During the periods starting on or after 1 st April 2006:- (a) The flour of wheat and rice including atta, maida, rawa, and suji whether sold singly or in mixed form. (b) The flour of pulses including besan whether sold singly or in mixed form.	As amended on 1/5/2005
C-37	During the periods starting on or after 1 st April,2006:- (a) The flour of wheat and rice including atta, maida, rawa, and suji whether sold singly or in mixed form. (b) The flour of pulses including besan whether sold singly or in mixed form. (c) Pulse flour including besan mixed with flour of other pulses, when sold on or after 1 st May, 2005. (d) Pulse flour including besan mixed with flour of cereals including maize, when sold on or after 1 st May, 2005. (e) Pulse flour including besan mixed with flour of other pulses and cereals, when sold on or after 1 st May, 2005.	As amended on 1/2/2006

In the case of **M/s. Meghraj Vidaram & Co (S.A. 535 /536/78 decided on 23.4.79)**, it was held that dhania dal would not be a pulse within the meaning of entry A-10 of the Bombay Sales Tax Act,1959. Now let me look at the wording of the schedule entry which existed at the time of the above judgment.

The entry A-10 as it stood then, is as follows :

A-10	Cereals and pulses in all forms and flour including atta, maida, besan, suji and bran prepared therefrom, but excluding maize flour.	Except when sold in sealed containers	15-7-62 to 6-81	30-
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It can be seen that the earlier entry was very wide i.e., "Cereals and pulses in all forms.....". The entry which stands today is also the same. In fact, it has been further widened to include even pulses in whole grain, split or broken form.

The basic point here is that the claim of dhanial dal being a pulse was not accepted in the above mentioned case. Hence, pulses in all forms or not, makes no difference. The product cannot be said to be covered by the entry A-9 or as the case may be C-20 of the Maharashtra Value Added Tax Act, 2002 for pulses.

In the case of **M/s. Jaihind Dhana Dal Factory**, it was held that dhanial dal prepared out of dhanial would neither be spices nor oil seeds. In the result, dhanial dal was classified under the scope of the residuary entry.

In the case of **M/s. D. K. Food & Chemicals**, it was held that "dhanial dal (roasted)" falls under the scope of the residuary entry C-102. The question for consideration was whether dhanial is known as pulses in the trade parlance and the same was answered in negative. Reliance was placed on the decisions in the cases of M/s. Meghraj Vidaram & Co. and M/s. Jaihind Dhanadal Factory v/s. The State of Maharashtra (S.A. No. 423 to 426 of 1965 dated 9.9.1966), wherein dhanial dal was held as covered by the residuary entry. The following observations from the decision could be seen, "Even otherwise, under section 14(vi-a) wherein pulses have been listed for the purposes of "Declared Goods" neither dhanial nor dhanial dal finds place under the said provisions of the Central Sales Tax Act, 1956". The contentions as regards the schedule entries A-10 and A-8 were rejected. Hence, let me look at the entry as it stood then and the corresponding schedule entry under the Maharashtra Value Added Tax Act, 2002 :

Schedule entry A-8

The entry A-8 as it stood then, is as follows :

A-8	Cereals and pulses (other than those described, covered or specified from time to time in any of the Schedules appended to the Act),- (i) in whole grain, split, broken or powdered form (excluding maize flour), and (ii) in parched or puffed form such as Poha, Lahya or Churmura.	11-8-1988 to 30-4-1992
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I have already reproduced above the corresponding schedule entry for pulses under the Maharashtra Value Added Tax Act, 2002.

Also, I have already discussed above as to how the claim as regards dhanial dal being a pulse was not accepted in the first place. Hence, dhanial dal cannot be regarded as a pulse.

Thus, the argument of the applicant that the dhanial dal would be pulses is not acceptable.

4] Schedule entry C-83

The other schedule entry which the applicant feels would alternatively be applicable to the product is schedule entry C-83 which reads thus :-

C-83	Roasted pulses including gram.	1.5.05 to 31.1.06	4%
C-83	Roasted or fried pulses including gram except when served for consumption.	From 1.2.06 onwards	4%

The applicant is of the opinion that dal is nothing but it is split in colloquial term and dhanial dal is nothing but roasted and processed dhanial kernel with its kernel intact. In support of the above view, the applicant has cited the following cases :-

1] **Samalswari Store v. State of Orissa [68 STC 228] (Cuttack High Court):** The following observations could be seen : "All forms of gram would include the various species and some of the by-products of gram as well. Dal is nothing else than broken gram. Unless dal was reduced into an entirely different species, such as, besan or shattu, it would continue to remain a broken form of gram itself. 'Dal' and 'gram' belong to the same family and their nature of use in many ways is also similar. Therefore, 'dal' is included in the expression "all forms of gram."

The above case pertains to gram which as per Webster's Dictionary means "*the chick-pea // any pulse used as food for horses*". "Pulse" as per the Encyclopedia Britannica (18) is described as – "*In Botany, a collective term for beans, peas, lentils and other members of the family leguminosae*". As per Webster's Dictionary, pulse means "*a leguminous plant (pea, bean, etc.). // the edible seeds of these plants*". The word "legume as per Webster's dictionary means "*a dry dehiscent one celled fruit, which splits along the suture of the single carpel, a pod (e.g. pea, bean) // a plant having such fruits // an edible seed of such a plant*".

Our schedule entry pertains to pulses including gram. Dhanial dal/dhanial seed is not a gram

2] **S. K. Nataraja Mudaliar & Co. v. The State of Tamil Nadu And Another (Madras High Court) [51 STC 55] :** The following was observed :- " The term "pulses and gram" used in item (vi-a) of section 14 of the Central Sales Tax Act,1956, and item 6-A of the Second Schedule to the Tamil Nadu General Sales Tax Act,1959, must be taken to cover pulses of all kinds and grams of all kinds. Even parched gram or fried gram in common parlance is still known as gram or dal. As a result of parching or frying, the moisture, if any, is removed and the gram is split, no new commercial commodity comes into existence. Therefore, fried gram or parched gram comes within the meaning of pulses and grams included in item (vi-a) of Tamil Nadu General Sales Tax Act,1959, and constitutes declared goods and it will not be open to the State Government to levy sales tax in excess of 4 per cent as provided under section 15(a) of the Central Act.

Both the cases cited by the applicant in support of his claim of the product falling under the schedule entry C-83, pertain to grams and pulses. The applicant's product, however, does not fall in either the category of "pulses" or "grams". Hence, the cases find no relevance in the present case. Thus even when the entry was very wide so as to include all types of pulses, the Tribunal rejected the claim of dhanial dal being a pulse.

The issue of whether dhanial dal is a pulse has been already decided and the same has been discussed by me in the earlier part of this order. Once it is decided that dhanial dal is not a pulse, it obviously means that it would not fall under "roasted or fried pulses"

Since it is settled that dhanial dal is neither pulses nor gram, the schedule entry C-83 which pertains to "roasted or fried pulses including gram" cannot be made applicable to the product, dhanial dal.

In view of the above deliberations, it is now decided that –

- The process of preparing of dhanial dal from dhanial does amount to manufacture.
- "Dhanial dal" is not covered by the entry no. A-9A /C-20 for pulses or entry no. C-83 for roasted pulses under

- (c) "Dhanial dal" is not covered by the entry no.A-51(iv)/ C-91(b) for dhanial (coriander) under the Maharashtra Value Added Tax Act, 2002.
- (d) "Dhanial dal" is not covered by the entry no C-91(a) for spices under the Maharashtra Value Added Tax Act, 2002.
- (e) "Dhanial dal" is covered by the residuary entry no E-1 of the Maharashtra Value Added Tax Act, 2002.

09. PROSPECTIVE EFFECT

The applicant has prayed that in the event of his product being classified in the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act,2002, his liability upto the date of the order be protected, by giving the determination order a prospective effect. The applicant pleads that he has been collecting taxes @ 4% on the sales of the product owing to the confusion.

This prayer of the applicant needs to be weighed in the light of the provisions made for the purposes of the Maharashtra Value Added Tax Act, 2002. The schedule entries are very clear and reflect the legislative intention appropriately. The applicant's product is a distinct commodity known in the market as different in existence from raw material that goes into its making. The applicant was content applying his own reasoning to the product and its process. I have already dealt in detail on each of the claims of the applicant and their inappropriateness. The relevant schedule entries that stand in Maharashtra Value Added Tax Act, 2002 are almost similar to that under the Bombay Sales Tax Act, 1959. Under the Bombay Sales Tax Act, 1959, there exists judicial precedence as regards the applicable rate to the applicant's product. Since, the position of schedule entries under the Maharashtra Value Added Tax Act, 2002 is not changed much as compared to the earlier position, I do not find any reason to adopt a view different from the earlier views taken by the Tribunal and the Courts.

Thus, in the absence of any statutory misguidance, I find that the prayer of the applicant, as regards prospective effect to the determination order cannot be entertained. Hence, the prayer of the applicant is not accepted.

In view of the deliberations held herein above, I pass an order as follows :-

ORDER

(Under Section 56 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/52/B-06

Mumbai,dt. 30.04.2006

The questions posed for determination, in view of the discussion hereinabove, are decided as follows :-

Q.1 : Whether dehusking dhanial and adding proportionate quantum of salt for longer preservation amounts to manufacturing process as defined under section 2(15) of the Maharashtra Value Added Tax Act, 2002 and whether the applicant's purchases of dhanial from registered dealers and selling dhanial dal amounts to resale as contemplated under section 2(22) of the Maharashtra Value Added Tax Act, 2002?

Ans. Dehusking dhanial and adding proportionate quantum of salt for its longer preservation amounts to manufacturing process as defined under section 2(15) of the Maharashtra Value Added Tax Act,2002. The applicant's purchases of dhanial from registered dealers and selling dhanial dal does not amount to resale as contemplated under section 2(22) of the Maharashtra Value Added Tax Act, 2002.

Q.2 : Under which schedule entry of Maharashtra Value Added Tax Act, 2002, the product dhanial dal is classified and what is the rate of tax applicable to the same?

The applicant's prayer as regards prospective effect to this determination order is herewith rejected.

(B. C. KHATUA)

**Commissioner of Sales Tax,
Maharashtra State, Mumbai.**

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