



Read :- 1. Application dated 28/06/2005 by M/s. Swastik Trading Company holder of Registration Certificate No. 400092/S/6059.

2. This office letter dated 25/01/2006 calling the applicant for hearing on 01/02/2006.

Heard :- Shri Ratan Samel, Advocate attended for hearing on behalf of the applicant for hearing on 01/02/2006.

PROCEEDINGS

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

No.DDQ11-2005/Adm-5/51/B-3

Mumbai,dt. 22/05/2006

The applicant, M/s. Swastik Trading Company of G/5, Mahavir Nagar, Dr.D.G.Palkar Road (Factory Lane), Off L.T. Road, Borivali (West), Mumbai-400 092 has posed similar questions for determination of his ten products. It is proposed to pass a single order covering all the ten products put up for determination.

The applicant purchases raw materials like fennel, sesamum or til seeds, ajwain, cumin seeds, clove, elachi, black pepper, sunth, dry mango, dhana dal, amala, turmeric, salt, sugar, rock salt, sat nimbu, etc., These raw materials are roasted and then salt, sugar, etc. is added proportionately. The product thus processed is sold as mouth freshener.

The applicant desires to know the answer to the following questions :-

- (i) Whether the process of preparation of “mouth freshener” by way of mixing the fried spices with salt, sugar, etc. amounts to manufacturing process as defined under section 2(15) of the Maharashtra Value Added Tax Act,2002?
- (ii) Whether applicant’s purchases of spices from registered dealers and selling the mixture of spices known as “mukhwas” amounts to resale as contemplated under section 2(22) of the Maharashtra Value Added Tax Act,2002?
- (iii) Under which schedule entry of the Maharashtra Value Added Tax Act, 2002, the product mouth Freshener known by different names is classified and what is the rate of tax applicable to the same?

02. **DETAILS SUBMITTED ALONGWITH APPLICATION**

The applicants have submitted the following details alongwith the application.

- 1 Copy of sale invoice No. 3707 dated 25/06/2005.
- 2 Copies of purchase invoices.
- 3 Copies of the various judgments relied upon by him.
- 4 Order of the Commissioner (Appeals) of Central Excise in the case of M/s. Swastik Trading Company & Others.
- 5 HSN Explanatory Note to Chapter 9 (Coffee, Tea, and Spices).

03. **BACKGROUND OF THE CASE**

The applicant processes and sells the following goods. The product-wise process could be seen as follows:-

manually and proportionate amount of turmeric and salt are mixed for preservation for a longer period. Then the said product is packed and marketed for sale as a mouth freshener.

- 2 Jamnagari Mukhwas mouth freshener: The applicant purchases fennel seeds, dhana dal, sesamum seeds, ajwain, suwa, turmeric and salt. The above seeds and dal are roasted manually and proportionate quantum of salt and turmeric powder are added to the mixture for preservation purposes. Then the product is sold in pouches as per Mukhwas.
- 3 Ganga Jamnuna mouth freshner: The applicant purchases dhana dal and fennel seeds. The said seeds and dal are roasted manually in a frying pan and proportionate quantum of salt and turmeric are added to the mixture for its longer preservation. The final mixture is packed in a pouch and sold as Mukhwas.
- 4 Gulab mukhwas: The product is processed by mixing proportionate quantum of fennel seeds, dhana dal, sesamum seeds, sugar, betel nuts and permitted flavours. The processed product is sold as a mouth freshener.
- 5 Fennel seeds coated with sugar: The applicant purchases fennel seeds from registered dealers. Proportionate quantum of sugar in liquid form is coated to the roasted fennel seeds. The product is packed and sold as Mukhwas.
- 6 Pipal Chatpata mouth freshner : The product is processed by mixing proportionate quantum of pipal, cumin seed, harde, amchur, pepper, sunth, black salt and sat nimbu. The product is sold as a mouth freshener.
- 7 Gilly Gilly mouth freshner: The product is processed by mixing proportionate quantum of gulkand, betel leaves, betel nuts, fennel seeds and flavoring material. The processed product is sold as a mouth freshener.
- 8 Jiragoli Sp. mouth freshner: The applicant purchases cumin seed, black pepper, sunth, dry mango, sat nimbu. Proportionate quantum of the above materials is mixed with sugar and the processed product is then sold as a mouth freshener.
- 9 Orangevati mouth freshner: The applicant purchases cumin seed, black pepper, sunth, dry mango, gulkand, cassia, and clove. Proportionate quantum of the above material is mixed with black salt and permitted flavours. The product is then sold as a mouth freshener.
- 10 Culcutta Mitha Pan mouth freshner: The applicant purchases betel leaves, sweetened rose petals, fennel seeds, cardamom, cloves, sandal flavour, silver foil. The above materials are mixed proportionately and the final product is sold as a mouth freshener.

04. **CONTENTION AND HEARING**

The case was fixed for hearing on 01/02/2006. Shri Ratan Samel, Advocate attended on behalf of the applicant.

It is the contention of the applicant that the process of mixing various seeds and spices with proportionate quantum of sugar, salt and scented flavour and selling the same as mouth freshener does not amount to a manufacturing process.

As regards the second question, the applicant is of the opinion that their processing of the products, if treated as a non-manufacturing process, then their purchases of spices, seeds, sugar, salt etc. from registered dealers should be treated as a resale.

As regards the third question, the applicant is of the opinion, that the rates of tax and schedule entries applicable to the processed products named as mouth freshener are as follows :-

	seeds of all types including oil seeds and seeds to which any other entry of this schedule or of schedule C applies.
51(iv)	Coriander seeds, Fenugreek and Parsley (suva) whole or powdered.
44	Herb, Katha (Catechu), gambiar, bark, dry plant, dry root, commonly known as jari booti and dry flower.
58(ii)	Oil seeds that is to say Sesamum or Til.
33	Roasted or fried pulses including gram.
36	Seeds other than seeds of cereals and pulses.
91	(a) Spices of all varieties and forms including cumin seed, hing (asafoetida), aniseed, saffron, pepper and poppy seeds; (b) For the periods starting on or after 1 st April, 2006 - chillies, turmeric, tamarind, coriander seeds, fenugreek and parsley (suva) whether whole or powdered.
45	Sugar
5	Betel Leaves.

The applicant submits that the Commissioner of Central Excise by order dated 14/07/2000 has treated the applicant's product which were referred to in the order as “*product's commonly known as 'Mukhwas'*” as falling under chapter 9 or chapter 21, as the case may be, being a kind of spices and food preparation. The applicant submits that since the Maharashtra Value Added Tax Act, 2002 follows HSN interpretation for the purpose of notification entries, the same be considered for the entry C-91 of the Maharashtra Value Added Tax Act, 2002 pertaining to spices of all varieties and forms and the same should be considered as covering his product, mouth freshener. The applicant's products (mouth fresheners) are also a form of spices.

In the alternative, the applicant submits that the processed products could be classified under schedule entry C-107 (ii) (f) which pertains to food stuffs and food provisions of all kinds. The applicant submits that his product is an item of food provision. Neither food or food stuffs nor food provision is defined under the Maharashtra Value Added Tax Act, 2002.

The applicant prays that, if the product's are treated as falling under the schedule entry E-1, then his past liability be protected.

The above arguments were reiterated during hearing.

05. OBSERVATIONS

I have gone through all the facts of the case. The applicant has described the manufacturing activity of each of the ten products put up for determination. A look at the preparation of the impugned products shows that the following processes are involved,-

- 1 roasting and frying,
- 2 adding of other ingredients
- 3 mixing of preservatives,
- 4 adding of flavours,
- 5 coating with sugar, wherever necessary,
- 6 quantity measurement, and
7. packing in small pouches for final sale as a “mouth freshener”

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?

A similar issue has been raised earlier. In the applicant's own case, the above issue has been decided. We could have a look at the concerned cases and the decisions taken therein :-

06. JUDGMENTS

1] M/s. Arihant Agencies & SAC Packaging (DDQ-11-2000/Adm-5/B-20 and B-4 Mumbai, dated 15.06.2001) : In this case, it was held that the

blending and mixing of various ingredients to produce ‘mukhwas’ and ‘breath freshner’, amounts to manufacturing within the meaning of section 2(17) of the Bombay Sales Tax Act, 1959 and their sales are liable to tax @ 13% under residuary entry C-II-152.

It was held that there is no specific entry for the product ‘Mukhwas’ or ‘Mouth freshener’. No other schedule entry other than schedule entries C-II-13(1) and (2) of the Bombay Sales Tax Act, 1959 were considered for discussion. The schedule entries C-II-13(1) and (2) of the Bombay Sales Tax Act, 1959 were held as not applicable to the product.

2] M/s. Swastic Trading Co. (DDQ-11-2003/Adm-5/12/B-6 Mumbai, dated 27.06.2003): The application seeking classification of ‘Mukhwas’ under section 52(1) (e) of the Act was held as not maintainable, in view of the order No. DDQ-11-2000/Adm-5/B-20 and B-4 dated 15.06.2001 passed earlier in the case of M/s. Arihant Agencies & SAC Packaging.

In the order cited at (1) above, it was elaborately discussed as to how the process of roasting and mixing of a number of ingredients brought about a new product into existence, having a new and distinct identity. It was observed that the ingredients such as variali, ajwain seeds, betel nuts etc. are not known or used as exclusive “breath freshners” but are spices instead. But the product formed by their combination is exclusively known as a “breath freshner”.

The test laid down by the Supreme Court in the case of M/s. Shivdutt & Sons (81 STC 197) was applied in deciding the case. The test laid down was that, any process is manufacture when it has an impact on the ingredients involved in it. It was held that the processes of roasting and mixing in different combinations had a substantial impact on the products involved as far as the price and utility was concerned. The price of 100 gm. of mukhwas is much more than 100 gm. of each of the constituent items. Further, the utility of each of the ingredient also changes considerably. The product is known in the market as mukhwas and not spices as such.

In the light of the above decisions, one of which pertains to the applicant himself, let me decide upon similar question put up for determination under the provisions of the new Act, MVATA, 2002. The first question posed is :

07. **QUESTION NO.1**

Whether the process of preparation of “mouth freshener” by way of mixing the fried spices with salt, sugar, etc. amounts to manufacturing process as defined under section 2(15) of the Maharashtra Value Added Tax Act, 2002?

This question is the same as posed in the above cases. However, the above question was posed for determination under the earlier Bombay Sales Tax Act, 1959. The question at present under consideration is under the new Act, i.e., Maharashtra Value Added Tax Act, 2002. Hence, we may look at the definition of ‘manufacture’ and ‘resale’ under the new Act.

[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	“manufacture”, with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods;

(c) Temming or on,	
(d) Lacquering of polyester film	
but does not include such manufacture or manufacturing processes as may be prescribed.	

[B] RESALE

Resale – Section 2(26) 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 “resale” shall be construed accordingly:

There is no difference in the definitions of resale. The difference in the definitions of manufacture is that under the B.S.T Act, the State Government could notify processes amounting to manufacture and processes not amounting to manufacture. One can very well see that the part which was mentioned against (a) in the definition on manufacture in the earlier Act has been retained in the new Act and the part relating to processes being notified was excluded. Thus, there is no much difference in the definition as it was then and as it stands now so far as the principles which determine the process as manufacturing or not are concerned. What follows from this is that the decision in the applicants owns case holds good today also. This, in turn, means that the applicant’s question no. 1 being an already decided issue, it requires no further deliberation and thought.

There are certain other judgments also, in which an identical issue was discussed such as :

- 1] M/s. Meghraj Vidaram & Co (S.A. 535 /536/78 decided on 23.4.79)
- 2] M/s. D. K. Foods& Chemicals Pvt. Ltd., (DDQ-1191/Adm-5/034/B-2 dt. 2.1.1992)
- 3] M/s. Ujwal Industries [DDQ-1196/Adm-5/159/B-5 Mumbai,dt. 17.10.1996]
- 4] Commissioner of Sales Tax, M.P. v/s. Madhu Supari Co (Madhya Pradesh High Court – 69 STC 150)
- 5] M/s. Kashmiri Products v/s. The State of Maharashtra (S.A.No. 191 to 194 of 1997 dt. 31/07/2002)
- 6] Union of India And Others v/s J. G. Glass Ind. Ltd. (Supreme Court) (114 STC 387)
- 7] Jaihind Dhanadal Factory v/s The State of Maharashtra (S.A.No. 423 to 426 of 1965 dated 9.9.1966)
- 8] State of Karnataka v. Raghuram Shetty (1981) (47 STC 369)
- 9] Deputy Commissioner of Sales Tax v. Sulaiman (1986) [61 STC 334]
- 10] Commissioner of Sales Tax v. Dunken Coffee Manufacturing Company (35 STC 493)

In the applicant's own case under the Bombay Sales Tax Act, 1959, the process of preparing the varieties of 'Mukhwas' was held as a manufacturing process. As mentioned earlier, the definition of 'manufacture' in the Maharashtra Value Added Tax Act, 2002 and as that of the Bombay Sales Tax Act, 1959 is pari passu, so far as the principles determining "manufacture" are concerned. In view of this fact, it is not worth discussing the various judgments cited by the applicant in this context.

To sum up, the discussion as regards deciding the first question of the applicant, I would conclude by saying that the process of preparation of mouth freshener by way of mixing the fried spices with salt, sugar, etc. amounts to manufacture as per section 2(11) of the Maharashtra Value Added Tax Act, 2002.

08. QUESTION NO. 2

Whether applicant's purchases of spices from registered dealers and selling the mixture of spices known as "mukhwas" amounts to resale as contemplated under section 2(22) of the MVAT Act, 2002?

It can be seen that Question No. 1 and Question No. 2 are two sides of the same coin. What is not a manufacture is a resale which can be said in another way, i.e., what is manufacture is not a resale. Hence, the Question No. 2 finds its answer in the answer to the Question No. 1.

09. QUESTION NO. 3

Under which schedule entry of MVAT Act, 2002 the product "mouth freshener" of different names is classified and what is the rate of tax applicable?

The applicant is of the opinion that the rate of tax applicable to spices, seeds, sugar, salt and flavouring essence would be the rate applicable to the impugned processed product known as "mouth freshener" since the activity of making of mouth freshener is a resale activity and not a manufacturing activity. He has mentioned the following entries :-

Sr.No.	Schedule entry	Description	Period	Rate of tax
1.	A-41	Seeds of all types	1.4.05 to 30.4.05	Nil
	A-41	Seeds of all types excluding oil seeds to which any other entry of this schedule or of schedule C applies	From 1.5.05 onwards	Nil
2	A-51(iv)	Coriander seeds, fenugreek and parsley (suva) whole or powdered	1.5.05 to 31.3.06	Nil
3.	C-44 C-44	Herb, bark, dry plant, dry root, commonly known as jari booti and dry flower. Herb, katha (Catechu), gambiar, bark, dry plant, dry root, commonly known as "jari booti" and dry flower	1.4.05 to 30.4.05 From 1.5.05 onwards	4% 4%
4.	C-68 (ii)	Sesamum or Til (Sesamum orientale)	1.4.05 to date	4%
5.	C-83 C-83 C-83	Roasted pulses including gram Roasted pulses including gram. Roasted or fried pulses including gram except when served for consumption.	1.4.05 to 30.4.05 1.5.05 to 31.1.06 From 1.2.06 onwards	4% 4% 4%
6.	C-86	Seeds other than seeds of cereals and pulses	Deleted by notification w.e.f. 1.4.05	-
7.	C-91	Spices of all varieties and forms including cumin seeds,	1.4.05 to 30.4.05	4%

	C-91	(a) Spices of all varieties and forms including cumin seed, hing (asafoetida), aniseed, saffron, pepper and poppy seeds; (b) For the periods starting on or after 1 st April, 2006, - Chillies, turmeric, tamarind, coriander seeds, fenugreek and parsley (suva) whether whole or powdered.	1.5.05 to 31.01.06	4%
	C-91	(a) Subject to clause (b) spices including cumin seed, hing (asafoetida), aniseed, saffron, pepper and poppy seeds; (b) For the periods starting on or after 1 st April, 2006,- Chillies, turmeric, tamarind, coriander seeds, fenugreek and parsley (suva) whether whole or powdered.	1.2.06 onwards	4%
8.	A-45	Sugar, fabrics and tobacco as described from time to time in column 3 of the First Schedule to the Additional Duties of Excise (Goods of special Importance) Act, 1957.	1.4.05 to 31.1.06	Nil
	A-45	Sugar, fabrics and tobacco as described from time to time in column 3 of the First Schedule to the Additional Duties of Excise (Special Importance) Act, 1957. “Explanation: For removal of doubts it is hereby declared that tobacco shall not include pan masala, that is to say, any preparation containing betel nuts and tobacco and any one or more of the following ingredients namely:- (i) lime (ii) Katha (Catechu), whether or not containing any other ingredients such as cardamom, copra and menthol.”	1.2.06 to date	Nil
9.	A-5	Betel leaves	1.4.05 to date	Nil

In support of the above schedule entries, the applicant has put forth the following arguments:-

1. There being no manufacturing activity in the process of preparation of the mouth freshener, the rate of tax applicable would be the rate applicable to the ingredients that go into the making of the product.

I have already discussed in detail as to how the impugned activity is a manufacturing activity and therefore the question of the rate applicable to the ingredients being applicable to the final product does not arise at all.

2. The applicant is of the opinion that the product fennel seeds coated with sugar, scented supari, mukhwas, churan goli, jeera goli, etc. are spices. In support of his argument, the applicant has submitted a copy of the order by the Commissioner (Appeals) Central Excise, Mumbai, classifying the aforesaid product as falling under spices.

In the determination order passed earlier on a similar issue in the case of M/s. Arihant Agencies & SAC Packaging under the Bombay Sales Tax Act, 1959, similar entries under the said Act were not considered as applicable to the applicant's products.

Hence, let me have a look at the then corresponding entries under the Bombay Sales Tax Act, 1959 :-

Sr.No.	Schedule Entry No.	Description	Remarks
1.	A-9	Cereals and pulses including seeds thereof (other than those described, covered or specified from time to time in any of the Schedules appended to the Act),- (1) in whole grain, split, broken or powdered form (excluding maize flour), and (2) in parched or puffed form such as Poha, Lahya or Churmura.	[Except when the wheat is sold in broken or powdered form under a brand name, in a sealed container, weighing not more than 10 kilograms.]
2.	A-10	Dhania, Methi and Suva, whole or powdered except when sold in powder form in sealed container under a brand name.	--
3.	A-15	(1) Fabrics. (2) Sugar, and (3) Tobacco, as described from time to time in column (3) of the First Schedule to the Additional Duties of excise (Goods of Special Importance) Act, 1957 and manufactured or produced in India]. Explanation -: For the removal of doubts, it is hereby declared that Pan Masala, that is to say any preparation containing betel nuts and any one or more of the ingredients, namely, lime, catechu and tobacco, whether or not containing any other ingredients such as cardamom, copra and menthol will not be covered by the scope of sub-entry (3) of this entry.	--
4.	A-38	(1) Plaintain leaves, Palas leaves, Patrahal and Dron, Betel leaves and pan tumbul, vida, patti made therefrom.	
5.	B-8	Oilseeds, that is to say,- (i) (ii) Sesamum or Til (Sesamum Orientale).	--
6.	C-I-2	Flower seeds, fruit seeds and vegetable seeds (other than oilseeds, Dhania, Methi and Suva) seeds of lucerne and other fodder grass; seeds of the sann, hemp, bulbs, corns rhizomes, suckers and tubers (other than edible tubers), bud grafts, <u>cuttings, grafts, layers, seedlings and plants.</u>	--
7.	C-I-3	Betel-nuts not being pan masala, scented or flavoured varieties of betel-nut sold under brand names covered by entry 13 of Part II of Schedule C.	--
8.	C-I-18	Starches, maize flour, tapioca flour and tamarind seed and powder thereof.	--
9.	C-II-4	(1) Dhania, Methi and Suva when sold in powder form in sealed container and under a brand name. (2) Chillies, turmeric and tamarinds, whole or powdered, or separated as the case may be, excluding chilli seeds and tamarind seeds sold in separated form. (3) Other spices including pepper, poppy seeds, and saffron but <u>excluding spices covered by entry 10 of Schedule A.</u>	

It can be seen from above that, there is not much change in the entries under both the Acts. The entries were not considered as applicable to the similar products put up for determination. It was held earlier under the Bombay Sales Tax Act, 1959 that, the products are

10. Now I shall discuss the claim made by the applicant as regards the schedule entries applicable to each of the product as follows :-

1] Variali (roasted) mouth freshener--: It is claimed that the product would fall under the entry C-91(a) - aniseed. If the product is not held as covered by C-91(a) then the product being a spice recognized by the Spice Board, it should be held as covered by the entry for spices i.e., C-91(a)- spices. The applicant's claim for these entries is backed by the reasoning that the product being not undergoing any manufacturing activity gets covered by the entry applicable to the raw material itself.

The above claims cannot be acceptable for reasons as discussed below.

We could look at the following article from the Web "*Fennel – encyclopedia article about Fennel*" --

"Fennel seeds are sometimes confused with aniseed, which is very similar in taste and appearance, though smaller. Indians often chew fennel seed (or saunf) as a mouth-freshener. Fennel is also used as a flavoring in some natural toothpastes. Some people employ it as a diuretic, while others use it to improve the milk supply of breastfeeding mothers."

The above description helps us to understand that there exists a difference between "Fennel seed" and "Aniseed". The product under consideration is "Fennel seed" and not "Aniseed" as understood by the entry C-91(a). Thus, the claim of the applicant as regards the product being covered by the entry C-91/ C-91(a) is not acceptable as the entries seek to cover "Aniseed" and not "Fennel seed".

The alternate claim of the applicant is that, the product being a spice, should be held as covered by the entry for spices i.e., C-91/C-91(a). In support of his argument that the product being "spices", he has submitted before me the list of spices under the purview of the Spices Board. This list is published by the Spices Board under the Ministry of Commerce & Industry, Government of India. This list does include the "fennel seeds" under the category of "seed spices". As explained earlier, the applicant is selling the product after roasting and adding turmeric and salt to it. The product is sold as "Mukhwas" or "Mouth Freshner". Nobody will use this product as "spices". Significantly, the applicant himself is not selling it as spices. The mention of "fennel seed" in the Spice Board list is of the unprocessed fennel seeds only. In view of this, the applicant's claim of his product being "spices" is not acceptable.

2] Jamnagari Mukhwas mouth freshener--: Here again the applicant claims that the entries applicable are C-91(a) or C-91(b). The product is a combination of various ingredients on which processing is done to obtain a product recognized in the market as a mouth freshner.

As discussed earlier, since the process amounts to manufacturing his claim of being a product covered by the above entries is not applicable.

The applicant has claimed that the other entry applicable would be C-68(ii). "Sesamum or Til" as understood by the entry C-68(ii) is in its original form. The product of the applicant is not in its raw form. It has undergone a manufacturing process and is a new and distinct product from the original product that goes into its manufacturing.

Hence the applicant's claim as regards the schedule entries being applicable to the impugned product is not acceptable.

3] Ganga Jamuna mouth freshner

4] Gulab mukhwas

5] Fennel seeds coated with sugar

6] Jiragoli Sp. mouth freshner

7] Orangevati mouth freshner

8] Calcutta Mitha Pan mouth freshner

The applicant has put forth the same argument as in the above as regards the schedule entries being applicable to the products. As discussed earlier, the applicant's activity is held as manufacturing. A new and different commercial commodity comes into existence by virtue of the process applied. The applicant's claim that the product is covered by the schedule entry C-91(a) or C-91(b) of the Maharashtra Value Added Tax Act, 2002 is hence not acceptable.

product.

9] Pipal Chatpata mouth freshner--: The applicant has put forth the same argument as in the above as regards the schedule entries being applicable to the product and the same reasoning as of earlier products mentioned by me applies to this product not being covered by the entries.

The applicant has alternatively claimed that the other entry applicable would be C-44. The entry C-44 reads thus,-
“Herbs, katha (catechu), gambiar, bark, dry plant, dry root, commonly known as jari booti and dry flower”

He stated that no synonymous entry was present in the B.S.T. Act and hence there was no occasion to consider the applicabilities of such entry to this product. The applicant claims that the “Pipal” used in the making of this product is a dry flower.

Herb, bark, dry plant, dry root, commonly known as jari booti and dry flower as understood by the entry C-44 is in its natural form. The product of the applicant is not in its natural form. It has undergone a manufacturing process and is a new and distinct product from the original that goes into its manufacturing. It is a product made from dry flower and not dry flower itself. The final product is sold as ‘Mukhwas’ which is not known as “jari booti and dry flower” as contemplated by the schedule entry C-44. Also, the products covered by the entry C-44 are not finished products. The applicant’s product is a finished product and thus beyond the ambit of the schedule entry C-44 of the Maharashtra Value Added Tax Act, 2002.

10] Gilly Gilly mouth freshner--: The applicant has reiterated the argument as in the above products and the same reasoning as mentioned by me above applies for this product also not being covered by the entries C-91(a) or C-91(b).

The applicant has put forth an alternate claim that the other entry applicable would be C-44. The applicant claims that the “Gulkand” used in the making of this product is dry rose flower. “Herb, bark, dry plant, dry root, commonly known as jari booti and dry flower” as understood by the entry C-44 is in its natural form. The product of the applicant is not in its natural form. It has undergone a manufacturing process and is a new and distinct product from the original product that goes into its manufacturing.

Hence, the applicant’s claim as regards the schedule entry C-44 being applicable to the impugned product is not acceptable.

11. In the alternative, the applicant submits that the process applied to the products if held to be manufacturing, the products could be considered for classification in the schedule entry C-107(11) (f) which has been introduced w.e.f. 1.2.06. It pertains to

“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,

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

12. Considering the use of the word “foodstuff”, the applicant has invited my attention to the dictionary meaning of the word “food/ food stuff” as well as the decisions in the following cases:-

1] State of Bombay v/s. Virkumar Gulabchand Shah (AIR 1952 SC 335) :

It was held that turmeric is food stuff in its wider meaning. The said judgment pertains to the interpretation of the word as per the clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946.

This judgment is not applicable, as our own High Court has defined the meaning of “food stuff” for the purpose of interpretation of schedule entries in the sales tax statute.

2] Nathunilal Gupta v/s. State [AIR 1964 Cal. 279] :

The applicant has invited my attention to the following observations in the judgment :-

“There is practically no distinction between the meaning of the words ‘food’ and food stuff. Foodstuff has no special meaning of its own. A thing may be a food or food stuff even if not directly consumed and has no nutritive value but is only used for culinary purposes in the preparation of food. So far as wheat and wheat products are concerned, there is no room for doubt that they are food even if they are

not consumed as they are suitable to be consumed after undergoing some technological process where the same are ready for consumption, and as 'food', they come within the definition of essential commodity in R. 35(5) of the Defence of India Rules, AIR 1952 SC 335.

This judgment too, pertains to the definition of "food stuff" in the Essential Commodities Act. As mentioned earlier, our Court has defined the meaning of the word "food stuff" for interpretation of schedule entries under sales tax statute.

3] Nanjundeshwara Mart V/s. State of Karnataka [84 STC 534] [Bangalore High Court]:

It was held that the word "food" being not defined in the Karnataka Sales Tax Act or in the rules made thereunder, it has to be understood in the sense it has in common parlance and in its popular meaning as understood by people. The popular meaning of the word "food" is in its wider sense and it is in that sense the word "food" is understood in common parlance.

The judgment pertains to the various commodities such as til seed, cinnamon or dry mango, etc., which are the food products. This judgment has no applicability to our case.

4] State of Madhya Pradesh & Another v/s. G. S. Dall And Flour Mills (S.C.) (80 STC 138):

It was observed that the doctrine of contemporanea expositio applies in cases where the plea is that, though the language of the statute may appear to be wide enough to seem applicable against the subject in particular situations, the state itself – which was the progenitor of the statute – had not understood it in that way. But to apply the doctrine to widen the ambit of the statutory language would, however, virtually mean that the state can determine the interpretation of a statute by its ipse dixit. That, certainly, is not, and cannot be, the scope of the doctrine. The doctrine can be applied to limit the state to its own narrower interpretation in favour of the subject but not to claim its interpretation in its own favour as conclusive.

The provisions in our statute are clear and unambiguous. There is no scope for intendment. A cursory look at the schedule of the Maharashtra Value Added Tax Act, 2002 will show that there are numerous entries for eatables such as pizza bread, spices, beverages, cereals and pulses etc. This clearly shows that anything which is eatable cannot be treated as food stuff. The meaning of food stuff for interpretation of a taxing statute has to be construed to mean a "food which satisfies appetite". As such, this judgment which is more of judicial interpretation has no applicability to the facts of our case.

13. The applicant's claim of the product "mouth freshener" being an item of food could thus be disapproved as below :-

1] The following definitions of the word "food stuff" and 'food' could be seen :

"a basic substance used as food".

In the New International Dictionary "food" is defined as :

"Material consisting of carbohydrates, fats, proteins, and supplementary substances (as minerals, vitamins) that is taken or absorbed into the body of an organism in order to sustain growth, repair, and all vital processes and to furnish Jenergy for all activity of the organism."

According to Chamber's 20th Edition Dictionary "food" is defined as :

"what one feeds on; that which, being digested, nourishes the body; whatever sustains or promotes growth".

Interpreted in its primary sense "food" must be a thing taken into the system as nourishment and not merely as a stimulant. – CST v. Sunhari Lal Jain, (1975) 35 STC 425 (All).

2] The following observations from the case of Commissioner of Sales Tax v/s. V. L. Industries by the Bombay High Court could be useful in determining the said controversy :-

The issue involved was whether "Gulkand" is a food/foodstuff. It was observed by the High Court, - *"The expression "foodstuff" or "food provision" has not been defined in the Act. These are words of everyday use and they must, therefore, be understood in their popular sense. Viewed in that sense, "Gulkand" can never be regarded as foodstuff or food provision. Food as ordinarily understood means : material consisting of carbohydrates, fats, proteins and supplementary substances (as minerals, vitamins) that is taken or absorbed into the body of an organism in order to sustain growth, repair, and all vital processes and to furnish energy for all activity of the organism. Foodstuff, in common parlance, means those articles which are eaten at the tea table. "Gulkand" which is normally used as a mouth freshener or good taste cannot be regarded as foodstuff or food provision".*

3] In the case of State of Gujarat v/s. Gokaldas Trading CO. {Gujarat High Court, it was held that "Bournvita" is neither a foodstuff nor a food provision.

food. The following observations could be viewed, -

“In common parlance, “food” is something that is eaten. In a wider sense, “food” may include not only solid substances but also a drink. Still the fact remains that whether a solid or a liquid, the substance called “food” should possess the quality to maintain life and its growth ; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body.”

5] In the case of Commissioner of Sales Tax, U.P. Lucknow v/s. Gulati & Co [Allahabad High Court], it was held that food colours and essences are not foodstuff in common parlance.

6] In order to decide the applicability of the schedule entry C-107 (11) (f), the term of food stuff requires deliberation.

The word ‘food stuff’ was a subject matter before the Bombay High Court in the case of M/s. Pure Ice-cream [36 STC 13] and it was held that, the word ‘food stuff’ is not confined to a substantial course that could be taken by way of meal but would also include subsidiary course that could be taken as snacks or refreshment. The Court thus, held Ice cream as a cooked food. The then Commissioner in the case of M/s. Welcome Foods in the determination order dated 18/02/1985, observed that, the various items of farsans and wafer are foodstuff. Thus, the word “food stuff” would include only the main course of meal and the subsidiary course such as snacks or refreshment. The meaning to the word “food stuff” cannot be extended to each and everything that is being consumed or eaten.

Having regard to the above discussion, it can be concluded that “mukhwas” is not a foodstuff/ food provision. The same reasoning as in the case cited at sr.no. 1 above applies to the present case. A “mouth freshener” cannot be regarded as a food possessing the quality to maintain life and its growth.

Thus, the applicant’s claim of the impugned product falling under either the schedule entries of the individual constituents that go into the making of the final product or the entry on foodstuffs is not acceptable. There being no other entry in the schedules A, B C & D appended to the Act, the product “mouth freshener” having varying names and ingredients gets automatically placed in the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act,2002.

14. PLEA FOR 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 under the Maharashtra Value Added Tax Act, 2002 as to whether there truly existed a statutory misguidance. I do not find any merit in the plea of the applicant. 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 its ingredients. Also, the product is not a foodstuff as has been reasonably explained in the preceding paragraphs. The applicant was content applying his own reasoning to the products and the processes involved. I have already dealt in detail on each of the claims of the applicant and their inappropriateness. Also, there were enough judicial pronouncements. In the applicant’s own case, the determination in respect of the same products was given in the earlier Act. As I have mentioned earlier, there is no change in the concept of manufacturing and resale in the Maharashtra Value Added Tax Act, 2002 as compared to the earlier Act. Also, no new entry exists in the Maharashtra Value Added Tax Act, 2002 which can accommodate the applicant’s products. The position of law being very clear from the beginning, there is no scope for any statutory misguidance. The applicant’s prayer for prospective effect is, therefore, rejected

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

ORDER

(Under section 56(1) of the Maharashtra Value Added Tax Act
No.DDQ11-2005/Adm-5/51/B- Mumbai,dt.

The set of ten applications received for determination of identical issues is decided by passing a common order as follows :-

Q 1. : Whether the process of preparation of “mouth freshener” by way of simply mixing the fried spices with salt, sugar, etc., amounts to

Answer : The process amounts to manufacture of a new and different commodity distinct in identity from the constituents that go into its making.

Q.2. : Whether applicant's purchases of spices from registered dealers and selling the mixture of spices known as "mukhwas" amounts to resale as contemplated under section 2(22) of the Maharashtra Value Added Tax Act, 2002?

Answer : The activity cannot be regarded as a resale of the purchases from registered dealers. It is a manufacturing activity.

Q.3 : Under which schedule entry of Maharashtra Value Added Tax Act, 2002, the product "mouth freshener" of different names is classified and what is the rate of tax applicable?

Answer : The product "mouth freshener" known by different names falls under schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby attracting tax @ 12.5%.

The applicant's prayer for prospective effect is herewith rejected.

(B. C. KHATUA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.

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