Read:-1. Application dated 06/08/2005 from M/s Vinod Stainless Steel Works, having Registration Certificate No. 4000
400002/C/9595 under C.S.T.Act, 1956.

2. Letter dated 25/11/2005 from this office calling the applicant for hearing on 29/11/2005.

Heard:- Shri G. S. Jetly, Sr.Advocate attended alongwith Shri Rajiv Jetly, C.A. for

hearing on 29/11/2005.

PROCEEDINGS

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

No.DDQ-11-2005/Adm-5/65/B-3 Mumbai,dt.10/04/2006

An application is received from M/s. Vinod Stainless Steel Works ( proprietor of M/s. Vinod Stainless Wares
Dr. A. Merchant Rd, Bhuleshwar, Mumbai-400 002 for determination of the question as follows :-

"Whether on the facts and in the circumstances of the case, the sale made by us under invoice no. 000089 dat
casseroles and hot pot for a sum of Rs. 67139/- which includes Value Added Tax of Rs.2582.28 at the rate of 4% is lia
Value Added Tax Act, 2002?"

The invoice no.000089 covers the following goods: 1] Deluxe Hot Tiffin

2] Hot Casserole

3] Hot Pot

The applicant has been treating the above products as taxable under the schedule entry C-33(a) of the Mahara
applicant hereby seeks confirmation of this view.

**DETAILS SUBMITTED ALONGWITH THE APPLICATION**

**02.** The applicant has submitted following details along with the application :-

1) A copy of the sale invoice No. 000089 dated 14/07/2005 of M/s. Vinod Stainless Steel Works to M/s. Somch

2) A copy of the sale invoice No. 094 dated 14-08-2002 of M/s. Somchand Jethalal Enterprises selling therein t

3) A confirmation from All India Stainless Steel Industries Association certifying that Stainless Steel Hot cass
domestic utensils made of stainless steel covered by the schedule entry C-33(a) of the Maharashtra Value A

4) A confirmation from Stainless Steel Merchant's Association certifying that Stainless Steel Hot casserole, Hot utensils made of stainless steel covered by the schedule entry C-33(a) of the Maharashtra Value Added Tax

5) Inspection/Testing report by Veermata Jijabai Technological Institute (VJTI).

6) A confirmation from a customer describing the product Deluxe Hot Tiffin, as a domestic utensil used by he food warm for few hours.

7) A brochure showing the various products manufactured by M/s Vinod Stainless Steel Works.

8) Proof of payment of fees of Rs. 100/-.

9) Letter of authority in the name of Shri J. S. Jetly, Advocate and Shri Rajiv Jetly, C.A. for attending on behal

**BACKGROUND OF THE CASE**

**03.** The applicant is duly registered under the Maharashtra Value Added Tax Act, 2002. The applicant deals in it currently under consideration are also made of stainless steel. He has been treating the sales of the items currently Deluxe Hot Tiffin and Hot Pot as taxable under schedule entry C-33(a) of the Maharashtra Value Added Tax Act, 2002. above entry, which reads thus "*Ferrous and non-ferrous domestic utensils other than those made from precious metals*

The said entry was amended w.e.f 1/5/2005 so as to include the words "whether coated with any material pressure cookers and pans and Buckets have been introduced w.e.f 1/5/2005.

We could have a look at the entry as it stood on 1/4/2005 and 1/5/2005 as under:-

| **AS ON 1/4/2005** | **AS ON 1/5/2005** |
|---|---|
| **C-33** Ferrous and non-ferrous domestic utensils other than those made from precious metals | **C-33(a)** Ferrous and non-ferrous domestic utensils, whether coated with any material or not other than those made from precious metals,<br>(**b**) Domestic pressure cookers and pans;<br>**(c)** Buckets made of iron , steel, aluminum ,plastic or any other material |

The applicant, in support of his claim that his products are covered by the entry C-33(a) of Maharashtra Val certification from the following institutes explaining the nature of his products :

**[A] ALL INDIA STAINLESS STEEL INDUSTRIES ASSOCIATION**

All India Stainless Steel Industries Association has confirmed that their members are manufacturin and non-ferrous metals like stainless steel and aluminium such as Hot Casserole, Hot Pot and Hot Tiffin C products is 4% w.e.f 1/5/2005 being covered by schedule entry C-33(a).

**[B] STAINLESS STEEL MERCHANT'S ASSOCIATION**

The Stainless Steel Merchant's Association has confirmed that its members are manufacturers of st

Hot Tiffin carrier which are coated with chemicals. These products are used as domestic utensils. The sale
w.e.f 1/5/2005 being covered by schedule entry C-33(a).

**[C] VEERMATA JIJABAI TECHNOLOGICAL INSTITUTE [VJTI]**

The institute has submitted its report on the subject matter of "inspection of stainless steel Hot
inspection/testing report brings out followings facts about the manufacturing process of stainless steel Hot C

**MANUFACTURING PROCESS**

1) Steel blanks of 26 gauge are cut from stainless steel sheets.

2) The outer casing and the inner casing are made using appropriate dyes on deep drawing machines.

3) Isocyanate MDI & EMPEYOL HST 200/11, chemicals are then coated on the inner side of the outer casin

4) The inner casing is placed inside the outer casing and the top flange is beaded on to the outer casing, s

5) Isocyanate MDI & EMPEYOL HST 200/11 is used as coating to impart he

**CONTENTION AND HEARING**

**04.** The case was taken up for hearing on 29-11-2005. Shri J. S. Jetly, Sr.Advocate along with Shri. Rajiv Jetly
products fall under schedule entry C-33(a) of the Maharashtra Value Added Tax Act, 2002 which is broad enough to c

The applicant is of the view that his products squarely fall under schedule entry C-33(a) of the Maharashtra
domestic utensils being a word of wide import, anything connected with the preparation of food, preservation after p
consumption of food will be covered as domestic utensils. It is his contention that the word 'domestic utensils' has n
made there under. The state government has also not issued any list of articles which could be described as domestic
that his products are stainless steel domestic utensils. He submits that all the three products are used in households
keep the food hot after it has been cooked.

He submits that All India Stainless Steel Industries Association and Stainless Steel Merchant's Association have
goods being covered by the schedule entry C-33(a) of the Maharashtra Value Added Tax Act, 2002. The goods are certi
utensils and thus are covered by schedule entry C-33(a). Also, he submits that Veermata Jijabai Technological Institut
as serveware.

Hence, he requests that the said items be treated as covered under schedule entry C-33(a) of the Maharashtr
tax @ 4%.

In the alternative, he has also prayed that if the goods are held to be not covered by schedule entry C-33(a) o
2002, then prospective effect be given to the determination order, so as to protect his liability.

**OBSERVATIONS**

**05.** I have carefully gone through all the facts placed before me. The issue involved is the determination of the r
Added Tax Act, 2002 on the following goods sold vide invoice no. 000089 dated 14/07/2005 :-

1) Deluxe Hot Tiffin 2) Hot Casserole 3) Hot Pot

The meanings of the words used to describe the applicant's products could be seen thus

1] **Tiffin :** The word "tiffin" in common parlance is used to mean a container used by people to carry food (meal) to their work place or a picnic spot or a nursing home for an ailing patient.

2] **Casserole :** The word "casserole" as per Webster's dictionary means "a covered dish of earthenware or toughened glass, etc. in which food needing long, slow cooking is prepa

3] **Hot Pot :** A "Hot Pot" means a container used for holding liquid or solids of a high temperature. Thus it means a container which is used to keep food or beverages hot.

We could also look at the dictionary meaning of the word **"Utensils"** which could be reproduced as follows :

**AS PER OXFORD'S DICTIONARY**

*"Utensil -**1**.Domestic vessels, appliances, and furniture **2.** Any article useful or necessary in a household; a domestic im now esp., an instrument or vessel in common use in a kitchen, dairy, etc. **3.** Any vessel (or other article) serving a implement used by artisans, farmers, etc. **4**. One who is made use of (rare) **5**. A sacred vessel, etc., belonging to, and worship."*

**AS PER WEBSTER'S DICTIONARY**

*"Utensil - any of various vessels or devices used in a kitchen, e.g. a cooking pot or eggbeater // any of various tools us ornament etc. used in church services"*

In order to have a better understanding of the issue, it will be useful to see the treatment given to the applica Sales Tax Act, 1959.

**06. TREATMENT UNDER BOMBAY SALES TAX ACT, 1959**

This issue as regards the rate of tax applicable to the above products has already been determined under t applicant's own case. The applicant's claim under the Bombay Sales Tax Act, 1959 was that his goods would be covere 26. It was, however, held as covered by the schedule entry C-II-53. The entries could be reproduced thus :-

| **Applicant's claim - Schedule entry C-II-26 / CII 26 (1)** | **Determination- Schedule entry C-II-53** |
|---|---|
| Cookware, serveware and kitchenware coated with any material to make heat resistant or non-stick. | All kinds of industrial, commercial and domestic receptacles to keep food or beverages hot or cold including vacuum flasks, thermoses, thermic jugs, ice buckets or boxes, urns, casseroles and components, parts and accessories thereof. |

It was held that the schedule entry C-II-26(1)/ CII 26 covers vessels which are used to cook/serve food restaurant. These wares could be having enhanced utility such as they may be heat resistant or nonstick. Thus this used to cook and serve food. The schedule entry C-II-53 pertains to vacuum flasks, thermoses, urns, ice boxes or o which are used to keep food or beverages hot or cold and the components, parts and accessories of such containers. entry for these items. Thus when there is a general entry C-II-26/C-II-26(1) as well as a special entry (C-II-53), t

Under the Bombay Sales Tax Act, 1959, there were a number of schedule entries for items of similar n reproduced herein:-

| **SCHEDULE ENTRY** | **DESCRIPTION** | **RATE OF TAX** | **REMARKS.** |
|---|---|---|---|
| A-23 | Household articles as may be notified by the State Government from time to time by notification in the Official Gazette | TAX-FREE | 1 Rolling Board and Rolling Pin both of wood.<br>2. Dusters covered by entry 15 of Schedule A.<br>3. Brooms made out of grass and cocobrooms.<br>4 Brushes of a kind used for cleaning floors including toilet floor having wooden handles and non metallic bristles.<br>5. Earthen Math. |
| C-II-24 | Household utensils made of non-ferrous metals excluding those covered elsewhere. | 4% | 1.10.1995 to date |
| C-II-25 | Household utensils made of stainless steel or iron excluding those covered elsewhere. | 4% | 1.10.1995 to date |
| C-II-26 | (1 Cookware, serveware and kitchenware coated with any material to make heat resistant or non-stick.<br>(2) Water filters or water purifiers including electrical or electronic filters and purifiers. | 13%<br>13% | 1.5.1998 to date<br>1.5.1998 to date |
| C-II-27 | Table cutlery including knives, spoons, forks, ladles, skimmers or similar kitchen or tableware. | 4% | 1.1.2000 to date |
| C-II-28 | Crockery of all types. | 12% | 1.10.1996 to date |
| C-II-29 | Glass and glassware, sheets, roads and tubes of glass, silvered mirror. | 12% | 1.10.1996 to date |
| C-II-30 | Chinaware, glazed earthenware and articles made of porcelain, or ceramics other than those covered elsewhere. | 12% | 1.10.1996 to date |

| | | | |
|---|---|---|---|
| | of steel or aluminium. | | |
| C-II-53 | All kinds of industrial, commercial and domestic receptacles to keep food or beverages hot or cold including vacuum flasks, thermoses, thermic jugs, ice-buckets or boxes, urns, casseroles and components, parts and accessories thereof. | 13% | 1.5.1998 to date |
| C-II-58 | (1) Stoves including gas stoves, cookers of all kinds and components, parts and accessories thereof.<br><br>(2) Lighters of all kinds. | 13%<br><br>13% | 1.10.1996 to date<br><br>1.10.1996 to date |
| C-II-118 | Domestic and commercial electrical and electronic appliances that is to say cooking ranges, microwave ovens, washing machines and vaccum cleaners and components, parts and accessories of any of them. | 13% | 1.7.2004 to date |
| C-II-119 | Other domestic and commercial electrical and electronic appliances such as grinders, mixers, blenders, irons, hair driers, shavers, heaters, hot plates, toasters, boilers, oven not being microwave ovens, geysers and components, parts and accessories of any of them. | 13% | 1.10.1995 to date |

The d of the word "Utensils" is very broad. However the meaning as intended for the purpose of the tax seen from the above treatment to the same under the earlier Act. As per the dictionary meaning any article useful o Hence, all items in the 13 different entries under the Bombay Sales Tax Act such as cookware, serveware, water filters by the word utensils and there would have been a single entry for all the utensils. However, the legislature has d separate schedule entries for the above items. Thus the legislature has not adopted the dictionary meaning of the legislature should be seen in drafting the schedule entries and would prevail over the dictionary meaning of the word.

However, not all dictionaries have adopted such a broad meaning of the word 'utensil'.

The definition of utensils as per the **Shorter Oxford Dictionary** as cited in the case of **Collector of Cen Metal Corporatio**n (1999) (105 E.L.T. 323 (Tribunal) ) could be reproduced herein as *"receptacle for a liquid or section and made of some durable material, specially utensils of this nature in domestic use, employed in connection drink and usually of size suitable for carrying by hand".*

Let us see whether this definition becomes applicable to the present case. The products are definitely further point of "made of some durable material", it does not hold true in the case of the impugned products. This report of the V.J.T.I which specifically mentions that "when a test was conducted by boiling water in the casserole, th out and deformed. Subsequent to this, the coating decomposes and escapes through the heading as gaseous forr casserole as a cooking device." Here it is to be noted that the raw material and the manufacturing process of all t

above advice is applicable to all the products. Hence the products cannot be used for cooking. Now the other use of
part of the above definition pertaining to serving of food is applicable to the impugned products as the same are not r
them unsuitable for cooking/preparation of food which involves application of heat.

It thus can be seen that the legislation has also treated various articles used in kitchen as different article
were covered by the Bombay Sales Tax schedule entry C-II-53 are not included in the Maharashtra Value Added Tax sc

In the ambit of the schedule entry C-33(a) of Maharashtra Value Added Tax Act, 2002, only the ferrous an
without coating, are included. The very fact that under the Bombay Sales Tax, the applicant's products were not trea
utensils and were classified in another schedule entry brings out the fact that the legislation never intended to treat th
be the case, the products of the applicant cannot be said to be covered by the scope of the schedule entry C-33(a).

## 07. TREATMENT UNDER MVAT ACT, 2002

Under the Maharashtra Value Added Tax Act, 2002 there are not many entries as in the Bombay Sales Tax
utensils. There is only one entry under the Maharashtra Value Added Tax Act, 2002. Hence, it becomes necessary to t
applicability to the present case. The wording of the schedule entry could be reproduced thus :

| AS ON 1/4/2005 | AS ON 1/5/2005 |
|---|---|
| **C-33** Ferrous and non-ferrous domestic utensils other than those made from precious metals. | **C-33(a)** Ferrous and non-ferrous domestic utensils, whether coated with any material or not other than those made from precious metals,<br>(**b)** Domestic pressure cookers and pans;<br>**(c)** Buckets made of iron, steel, aluminum, plastic or any other material. |

The schedule entry speaks of domestic utensils whether coated with any material or not. The coating as inter
coating as observed in the manufacturing process reproduced hereinabove of stainless steel Hot Casserole, Hot P
purposes of the schedule entry C-33(a) is visible from the outside as in a non stick pan, copper vessels, etc. The co
process is between the outer and inner casing and is not visible from the outside. This coating is for the added q
hours.

The schedule entry definitely does not seek to cover items of the nature as in the present case having special
hot for long hours. It is to be noted that the products come with the prefix '**Hot'** which evidently means that the proc
but the design/make/nature of the product (heat resistant medium imparted by the coating between the outer and i
user to keep the food stored in it hot. The applicant stresses on this feature of his products and the same is reflected
Pot, Hot Casserole and Deluxe Hot Tiffin. The products are marketed with a mention to this special feature in the fo
special type of serveware. The entry 33(a) seeks to cover only plain domestic utensils.

I have already observed in the earlier paras, on how the word "utensil" takes a meaning different than tha
of levy of tax under the Sales Tax statute. In this regard, we could also have a look at the Bombay High Court judgmen

**The Commissioner of Sales Tax v/s. Neelam Appliances decided on 21/10/2005 :** The question
stainless steel water filter is a utensil covered by schedule entry C-46 of the Bombay Sales Tax Act,1959. The following

"The utensils which are used for household purposes are understood to be not doing any functions on the

purposes of cooking and related activities. The stainless steel water filter can be said to be an appliance and not a d
water filter which is an appliance is different than the stainless utensil for household purpose as contemplated under
under section 41 of the Bombay Sales Tax Act, 1959.

With due respect, it is difficult to go alongwith the view taken by the M.P. High Court in the case of
considered in its popular sense and common parlance test is applied, even then it would not fall in the category of ute
learned Counsel for the assessee."

Thus, the above judgment further confirms my view that the dictionary meaning of utensils is different fron
of the legislation. Herein, we could also take a look at the interpretation of the word in rulings under the Central E
nature of domestic utensils and also have a look at the treatment given to similar products under the Central Excise Ta

We could look at one important observation as regards the distinction between utensils and vessels as no
**Excise vs. Sandip Metal Industries [1989 (42) ELT 142 (Tribunal)].** The same is reproduced thus:-

'Utensils' as the dictionary tells us, are vessels in use in a kitchen and a vessel is described by the S
'receptacle' for a liquid or other substances often one of circular section and made of some durable material, especially
employed in connection with preparation or serving of food or drink and usually of size suitable for carrying by hand.
possible to conceive of utensils as not being associated with kitchen principally as a vessel in which cooking is done".

[1 **Collector of Central Excise, Ahmedabad Vs. Kwality Metal Corporation [final order decided o**
**(Tribunal) :** The Tribunal observed that, "Aluminium dabba and dabbi, puri dabba, betha dabba, masala dabl
dabba, square dabba, idli/dhokla pot, barni with screw, khumcha, musalmani khumcha, tiffin cake pot cannot
but they are containers.

In arriving at the above conclusion, the Central Excise Tribunal has relied upon the definition of 'Ute
Dictionary.

[2] **Collector of Central Excise V/s. Sandip Metal Industries (decided on 18-3-1987) [1989 (42) ELT 142**
has held that, – "Welded trays, wire tiffin, tub, pappad dabba, garma dabbas, dhokla dabba, daba ubha and
holders to hold items of food etc., and not utensils." It is further observed that, "These are largely containers c
the purpose of carrying them from house to school or office and so on. Utensils, according to dictionary meani
vessel is described by the Shorter Oxford English Dictionary as a receptacle for a liquid or other substance. Fr
possible to conceive of utensils as not being associated with the kitchen principally as a vessel in which cookir
like even a tray to be assessed as a utensil. However, nobody regards tray as an utensil and it is certainly not
substances of food or drink. It may serve as a platform, in which utensils containing food and drink are carriec
to guests in the dining room, but a tray is never a vessel, nor can a pappad dabba, garma dabba and other d
just boxes or cases of receptacles for holding food items."

The above judgments confirm my interpretation of the word 'Utensils'.

Coming back to the Maharashtra Value Added Tax Act, 2002, the Schedule entry C-33(a) speaks of dom
items may fall within the dictionary meaning of the term "utensils". As has been discussed in this order earlier, the wo
purpose of both the Bombay Sales Tax Act, 1959 as well as the Maharashtra Value Added Tax Act, 2002 is not th
intention of the legislation is to levy tax at a lesser rate of 4% on utensils used daily in households to cook/serve food.
general purpose utensils of the nature used to cook or serve food under the entry on domestic utensils. It does not se
as serveware which keeps food hot for long periods of time. Under the repealed Bombay Sales Tax Act, 1959 the legi
had schedule entry C-II-26 / C-II-26(1) which was for cookware, serveware etc. and schedule entry C-II-53 which v
nature of a casserole, thermoses etc. which kept the food/liquid stored in it hot/cold. Also, the rate of tax on the
schedule entry C-II-26/C-II-26(1) was on lower side as compared to the rate for the special purpose items as covered

the Maharashtra Value Added Tax Act, 2002, there is only one entry which as per the detailed deliberations held he
purpose items of the nature used to cook or serve food. In the absence of a specific entry for items of the nature as r
the Bombay Sales Tax Act, 1959, the residuary entry E1 of the Maharashtra Value Added Tax Act, 2002 becomes applic

The legislative history speaks of the existence of two entries, one for ordinary cookware, serveware and othe
keep food/liquid hot or cold as the case may be. Hence in the absence of a corresponding entry to entry C-II-53 o
residuary entry E1 becomes applicable. Hence schedule entry C-33(a) would not apply to the applicant's products.

In view of the above deliberations and various case laws, the impugned items such as Deluxe Hot Tiffin, Hot P
be utensils as meant for the purposes of the schedule entry C-33(a) which pertains to domestic utensils. In absence of
products, the schedule entry E-1 becomes applicable.

**08. PROSPECTIVE EFFECT**

The applicant has prayed that, in case the products are determined to be not falling under schedule entry C-
giving the determination order a prospective effect i.e., from the date of the determination order**.**

This prayer of the applicant is not acceptable as the schedule entry appears to me very clear and self speakir
was to be understood strictly in terms of the schedule entry and the history of taxation of the said items, so far unde
applicant was content treating his products as domestic utensils because of the definition of utensils. However, what s
under the taxing statute. But he has conveniently ignored this fact that, the schedule entry covers utensils whic
cooking/serving. In the first place, the products of the applicant cannot be termed as utensils as meant for the purpos
pertains to domestic utensils. They are for a special purpose, as in keeping the food hot/cold.

Hence, the applicant's prayer being not supported by convincing reasons, the same cannot be accepted by me

**CONCLUSION**

**09.** In view of the deliberations held herein above, I have come to the conclusion that the products of the applicant
Hot Tiffin are receptacles / containers used to keep food hot. There being no specific entry covering the descriptior
Maharashtra Value Added Tax Act, 2002, they obviously get covered by the schedule entry E-1 of the Maharashtra Valu

In view of the above discussion, I proceed to pass an order as follows:-

**ORDER**

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

No.DDQ-11-2005/Adm-5/65/B-03 Mumbai,dt. 10.4.2006

The applicant’s question as to “Whether on the facts and in the circumstances of the case, the sale made
14/07/2005 of deluxe hot tiffins, hot casseroles and hot pot for a sum of Rs. 67139/- which includes Value Added Tax o
to tax under entry No. 33(a) of the Value Added Tax Act, 2002?” is hereby answered in the negative. The goods Hot P
are covered by schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002 thereby attracting tax @ 12.5% ar

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

**(B. C. KHATUA)**

**Commissioner of Sales Tax,**

**Maharashtra State,Mumbai.**