Read :- Application dt. 26/02/2009 by M/s Bunge India Pvt.Ltd., holder of TIN R.C.No.- 27160282712V.
Heard :- Shri P.V. Surte, Advocate, on behalf of the applicant.

PROCEEDINGS

(Under Section 56(3) of Maharashtra Value Added Tax Act, 2002)

No. DDQ-11/2009/Adm-3/9/B- 1 Mumbai,dt.19.11.09

The applicant M/s. Bunge India Pvt. Ltd. is registered under Tin-27160282712 and has corporate and registered office at B-401 & 501, Business Square, Andheri-Kurla Road, Chakala, Andheri(East)- 400 093.

02. FACTS OF THE CASE

The applicant had filed application for determination of rate of tax applicable to the sale of 'Lotus Margarine' and Golden Seal Margarine" packed in 50 kg.tonnes. The said application was decided by order dt. 22.02.2008 (No-.DDQ-11/2006/Adm-5/05/B-Mumbai, dt. 22.02.2008) and it was held that the goods sold are not covered by entry C-100 but they are taxable at 4% being goods covered by entry C-107-11-f of Schedule-C. It was held that during the period from 01.02.2006 to 31.01.2008, they would liable to tax at 12.5% being goods covered by residuary entry E-1 from 01.02.2008. Aggrieved by the aforesaid order, the applicant preferred appeal before the M.S.T.T on 19.03.2008. The said appeal came up for hearing from time to time and it was last heard on 21.01.2009. When it come to the prayer for grant of prospective relief, it was seen that no such prayer was made by the applicant when the application u/s (1) (e) was filed. As such, the applicant has preferred application under section 56(2) of the Act seeking prospective effect to the determination order.

03. CONTENTION

The applicant has contended that he is eligible for prospective effect to the order passed on 22.02.2008 on the following grounds:-

- The issue is highly debatable, under Entry C-100.
- In the past Margarine has been held as covered by the expression 'Hydrogenated Vegetable Oil' in the case of M/s. Hindustan Lever Ltd. by an order No. DDQ-1160/502-850-851/B- passed on 14-12-1960 by the then Commissioner of Sales Tax, Maharashtra State, Mumbai.
- Similar view was taken by succeeding Commissioner of Sales Tax while deciding the application filed by M/s. Berar Oil Industries vide order No. DDQ-1175/13/B-7 dated 09-07-1975.
- All along in the past Margarine has been subjected to tax under Entry C-II-37, C-II-30 & C-19 which cover 'Hydrogenated Vegetable Oils' including 'Vanaspati'.
- A certificate issued by Professor D.N. Bhowmick of the Institute of Chemical Technology, University of Mumbai, in the form of expert opinion also says that Margarine is 'Vanaspati'.
- All manufacturers and dealers dealing in Margarine have been treating the same as 'Hydrogenated Vegetable Oil' and are paying tax at the rate of 4%.

03. HEARING

The case was fixed for hearing on 15.07.2009. Shri P.V. Surte, attended on behalf of the applicant. He stated that the applicant wishes for prospective effect to the order dt .22.2.08. The advocate reiterated the six reasons already stated in the application, as to why the prospective effect should be given. He prayed that prospective effect be given to the determination order.

I have carefully considered the submissions of the applicant. The application for determination of rate of tax on 'Margarine' was decided through determination order dt. 22.02.2008. The applicant has now sought prospective effect to the order. In the said determination order 'Lotus Margarine' and Golden Seal Margarine" was held to be covered under Schedule entry C-107(11)(f) as 'Food stuff and food provision' as it is used in the preparation of food and is a 'food provision'. However, the said schedule entry was deleted w.e.f. 01.02.2008 and consequently the product, in absence of a specific schedule entry was held as covered by the residuary entry E-1. It is the prayer of the applicant that determination be made effective from the date of the determination.

Section 56(3) of MVAT Act, 2002 which empowers the Commissioner to grant prospective effect is as follows:-

Determination of disputed questions.-

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

The Commissioner has power to grant prospective effect in order to save the liability arising out of transactions effected before the date of determination. This is a discretionary power exercised by the Commissioner, where the circumstances faced by the dealer or the applicant adversely affected are such as to warrant the grant of prospective effect. Let me see the arguments advanced by the applicant in order that prospective effect be granted to them.

a) The applicant has referred to earlier determination orders passed in the case of M/s. Hindustan Lever Ltd. (cited supra) and in the case of M/s. Berar oil Industries (cited supra) in which Margarine was held as 'Hydrogenated Vanaspati Oil'. The entry under consideration in the determination order was as follows:-

Entry No.	**Description**	**Period**
C-37	Hydrogenated Vegetable Oils including Vanaspati.	01.01.1960 to 30.06.1981

The schedule entry under consideration in the determination order in the case of M/s. Bunge Pvt. Ltd. is as follows :-

Entry No.	**Description**	**Rate of tax**
C-100	Vanaspati (Hydrogenated Vegetable Oil)	4%

It is already discussed by me in the determination order in the case of the applicant that the Schedule entry C-37 encompassed all 'hydrogenated vegetable oils' which is not case now. The present schedule entry covers only 'vanaspati' and not the different types of HVO. It is true that in both the determination orders referred to by the applicant, 'Margarine' is described as 'hydrogenated vegetable oil'. However, Schedule entry C-100 of the MVAT Act is a concise entry. It covers only 'Vanaspati'. I have already deliberated in detail as to how 'Margarine' is not 'Vanaspati' and how though they belong to the same *genus* they are of different *species*.. The difference is not only technical but also marked in popular perception. If the buyer goes to a shop to buy Vanaspati he would not buy Margarine. It has been held from time to time by the Courts that the classification of product should be governed by the common man's perception of it. The schedule entries under the determination orders earlier and the present entry also being different leaves no scope for any confusion between "Margarine' and 'Vanaspati'..

b) The applicant has stated that the issue is highly debatable. I do not agree with this proposition and I have already explained how schedule entry C-100 is succinct and unambiguous.

c) In the past, Margarine may have been subjected to tax under entry C-37, C-II-30 and C-1-9. The classification of a product is governed by the schedules and the description against the entries. When the schedule entries and other provisions change or are amended, the judgments taken under the umbrella of the past law lose their applicability. What is of relevance is the current law. I have already discussed how 'Margarine' cannot be classified under the schedule entry C-100 , the entry with which we should be concerned now.

d) The applicant has referred to the certificate issued by Professor D.N. Bhowmick. In the certificate dt 8.1.2008, the Professor has certified that 'Margarine' is "Vanaspati' with 12-16% water and other additives. I have already explained that how a popular perception of a product guides its classification- in fact, the term 'Vanaspati' is deeply ingrained in the Indian psyche and is associated with that 'Vansapati' *which is without 12-16% water and the other additives*- the 'Vanaspati' is commonly used in the Indian kitchens for frying and never contains water- in fact, if it contained water –it would surely make it a bad candidate as far as a perfect frying medium is concerned!

e) The applicant has stated that all manufacturers and dealer dealing in Margarine have been treating the same as hydrogenated vegetable oil and are paying tax @ 4%. During the course of hearing, he referred to two companies- Kamani Oils and Godrej- and he stated that they are paying tax 2 4% on the sale of "Margarine'. Accordingly, on enquiry, it was intimated by the concerned authorities that Kamani Oils' is paying tax @ 12.5% on the sale of "Margarine' and M/s Godrej Industries has paid tax @ 4% on the sale of 'Margarine'. The fact that one of the two companies referred to by the applicant has been paying taxes @12.5% does not vindicate the statement of the applicant that 'all manufacturers and dealers' are treating 'Margarine' as "hydrogenated vegetable oil.

With regard to the above factors, I am of the opinion that there was no confusion in the matter and there was no statutory misguidance as the entries have changed from time to time and the tax affairs should have been conducted accordingly.

04. In view of the deliberations held hereinabove, it is hereby ordered that,

<u>ORDER</u>

(Under Section 56(3) of Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2009/Adm-3/07/B- 1 Mumbai, dt.19.11.09

For reasons as elaborately discussed in the order, the request for granting prospective effect to the determination order No -.DDQ-11/2006/Adm-5/05/B- dt. 22.02.2008 is considered and it is herewith ordered that the application for prospective effect is rejected.

(SANJAY BHATIA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai