Read: 1)Application for determination of disputed question U/s.56 of the MVAT Act, 2002,by M/s. Pushpam Healthcare Products, holder of VAT Registration No. 27430410458V.

Heard: Shri A.B. Ghanekar, S.T.P.

PROCEEDINGS

(Under Section 56(1)(e) of the MVAT Act, 2002.)

No.DDQ/11-2006/Adm.5/60/B-01 Mumbai, dt.23.12.2008

M/s. Pushpam Healthcare Products, having address as 653/1-B, New Gajara Society,Bibwewadi, Pune- 411 037, has filed an application u/s.56 of the MVAT Act, 2002 for determination of rate of tax on the sale of 'Magno Fruit Drink' sold through invoice no.060407 dated.26.04.06.

02. FACTS OF THE CASE

It is informed that the company manufactures a non-alcoholic beverage concentrate known as ' Magno Fruit Drink'. The manufacturing unit is located at Gate No. 104 / 2A, Borate vasti (Nagpur), Tal. Daund, Dist. Pune. The manufacturing process is explained below :

1**. Magno Juice**

a] Ingredients in powder form – Mangosteen Fruit, Goji Berry Fruit, Noni Fruit, Grape seed fruit, Green tea and Aloe Vera are dissolved in purified water with continuous stirring.

b) To this mixture, recipients and preservatives are added and the mixture is mixed till a uniform consistency is attained.

c] This mixture is then heat treated (pasteurized) and immediately filled in 1 Liter food grade plastic bottles. These bottles are then sealed, coded with batch mfg. information and packed in final printed carton.

The product is sold in the market under the name 'Magno'. The dealer is holding Manufacturing License No. DAU-1467 and the product is manufactured by the applicant and marketed by Greenways Healthcare Pvt.Ltd. It is stated that it is sold in Food Grade Plastic Bottles of 1 Litre and it is sold as 'Premium health drink'. It is further stated that it is sold in liquid concentrated form. The applicant has claimed that it contains the goodness of Mangosteen Fruit, Goji Berry Fruit, Noni Fruit, Grape seed Fruit, Green tea and Aloe Vera.

The ingredients in brief are as under :

i. Mangosteen fruit juice
ii. Goji Berry fruit juice
iii. Noni fruit juice
iv. Grape Seed fruit juice
v. Green Tea Extract
vi. Aloe Vera Juice
vii. Natural Sweetener
viii. Fruit flavors and class II preservatives.

It is informed that the suggested use of the product is 15 to 30 ml, twice a day with water or fruit juice. It is claimed that it is suitable for all ages, and though not a medicine, it is a health drink like other health drinks.

03. CONTENTION

It is contended that the product is covered by schedule entry C-107(11)(g) and is taxable @ 4%. It is stated by the applicant that they sell 'Magno fruit Drink' in liquid concentrate form and it is really a mixture of certain fruits having a concentrate form, which makes Magno quite unpalatable, and water is required to be added to make it a beverage. The above entry is applicable to goods from which beverages are prepared. Reference is made to the Mumbai High Court in the case of M/s. Food Specialties Ltd. (97 STC 407) which has explained the meaning of the word 'beverages'. The meaning as explained in the judgment is as under:

> 1] Any liquid for drinking other than water.
>
> 2) In Webster's 3rd International Dictionary, it is described as 'liquid for drinking especially such liquid other than water (as tea, milk, fruit juice, beer).Usually prepared (as by flavoring heating, admixing) before being consumed.
>
> 3) The Random House dictionary of the English language (College Edition) describes 'beverages' as 'any liquid for drinking especially such liquid other than water'.

According to the applicant, when the product is mixed with water, a beverage is prepared. In view of the insertion of clause (g) in Entry 107 (11), they are of the view that their product gets covered by the scope of the said entry and the rate of tax is 4%.

04. HEARING

The case was fixed for hearing on 2.9.08. Shri. A.B.Ghanekar (STP) attended on behalf of the applicant. He stated that the impugned product is a fruit concentrate to be mixed with water to obtain the drink. It is a liquid concentrate which contains the fruit extracts of grapes, mangosteen, gozi berry fruit, green tea and aloe vera extract. He stated that the law was amended on 1.2.06 and entry (g) was added to C-107 (11) of the MVAT schedule. He argued that the drink prepared from it is a kind of beverage and therefore it comes under schedule entry C-107(11)(g) and is taxable @ 4%.

05. OBSERVATIONS

I have gone through the facts of the case. The schedule entry under consideration is schedule entry C-107 (11)(g) which is reproduced as under :

C-107(11)(g)	**Powders, tablets, cubes, crystals and other solids or liquids** from which non-alcoholic beverages and soups are prepared.	**4%**

This entry covers only **Powders, tablets, cubes, and crystals and other solids or liquids from which** non-alcoholic beverages and soups are prepared. Therefore, there are two requirements of the entry. Firstly, the product should be in the nature of a **Powder, tablet, cube, crystal and other solids or liquids and secondly, it should be capable of resulting into a** non-alcoholic beverage and soup. Let me see whether the product conforms to the above description.

The applicant has produced the packing of the product. The 'Fact Sheet' describes the product as a health drink which is a plant-based vegetarian whole food nutritional supplement liquid formula prepared to strict norms. It is given that it 'combines the power of herbal anti-oxidant ingredients viz. Mangosteen juice, Aloe vera juice, Goji Berry juice, Green Tea Extract. Grape seed extract, Noni Fruit Juice'. Further, the packing describes the product as a 'premium health drink concentrate' containing the 'goodness of Mangosteen juice, Aloe vera juice, Goji Berry juice, Green Tea Extract. Grape seed extract, Noni Fruit ′. The suggested use of the product is as follows:

″Drink 15 to 30 ml twice a day, with water or fruit drink preferably before meals.″

It was stated by the applicant that the impugned product cannot be taken as it is and is unpalatable in that state. It has to be taken with water or fruit juice. It is seen that the recommended level is 15 to 30 ml to be mixed with water. A sample of the product was asked for and the applicant accordingly produced it on 12.9.08. It is seen that the product is in 'concentrate form'. The concentrated mixture certainly cannot be taken as it is. The bottle comes with a measuring cup and the quantity of 15 or 30 ml (as shown on the cup) has to be diluted with water. Therefore, it can be said to be a 'liquid concentrate' from which a 'fruit drink' can be prepared. Can such a fruit drink be called a 'non-alcoholic beverage'?

The Wikipedia describes a **non-alcoholic beverage** in the following manner:

> A non-alcoholic beverage as a beverage that contains no alcohol. Non-alcoholic mixed drinks (including punches, "virgin cocktails", or "mocktails") are often consumed by children, people whose religion restricts alcohol consumption, recovering alcoholics, and anyone wishing to enjoy flavorful drinks without alcohol. They are often available as alternative beverages in contexts (such as bars) where the norm is to drink alcoholic beverages.
>
> Examples include Shirley Temples, Virgin Marys, and virgin-style Piña Coladas. **The category includes drinks that traditionally have no trace of alcohol such as sodas, juices, and sparkling ciders**. It also includes drinks that have undergone an alcohol removal process such as non-alcoholic beers and de-alcoholized wines.

The 'Wikipedia' has the following information on the topic'Types of beverages'.

Water

Main article: Drinking water

Despite the fact that most beverages, including juice, soft drinks, and carbonated drinks, have some form of water in them; **water itself is often not classified as a beverage, and the word *beverage* has been recurrently defined as not referring to water.**

Essential to the survival of all organisms, water has historically been an important and life-sustaining drink to humans. Excluding fat, water composes approximately 70% of the human body by mass. It is a crucial component of metabolic processes and serves as a solvent for many bodily solutes. Health authorities have historically suggested at least eight glasses, eight fluid ounces each, of water per day (64 fluid ounces, or 1.89 litres), and the British Dietetic Association recommends 1.8 litres. The United States Environmental Protection Agency has determined that the average adult actually ingests 2.0 litres per day.

Distilled (pure) water is rarely found in nature. Spring water, a natural resource from which much bottled water comes, is generally imbued with minerals. Tap water, delivered by domestic water systems in developed nations, refers to water piped to homes through a tap. All of these forms of water are commonly drunk, often purified through filtration.

Alcoholic beverages

Main article: Alcoholic beverage

An alcoholic beverage is a drink containing ethanol, commonly known as alcohol, although in chemistry the definition of an alcohol includes many other compounds. Alcoholic beverages, such as wine, beer, and liquor have been part of human culture and development for 8,000 years.[6]

Non-alcoholic beverages

Main article: Non-alcoholic beverage

Non-alcoholic beverages are drinks that would normally contain alcohol, such as beer and wine but are made with less than .5 percent alcohol by volume. The category includes drinks that have undergone an alcohol removal process such as non-alcoholic beers and de-alcoholized wines.

- Non-alcoholic variants:
- Low alcohol beer
- Non-alcoholic wine
- Sparkling cider

Soft drinks

Main article: Soft drink

The name "soft drink" specifies a lack of alcohol by way of contrast to the term "hard drink" and the term "drink", the latter of which is nominally neutral but often carries connotations of alcoholic content. Beverages like colas, sparkling water, iced tea, lemonade, squash, and fruit punch are among the most common types of soft drinks, while hot chocolate, hot tea, coffee, milk, tap water, alcohol, and milkshakes do not fall into this classification. Many carbonated soft drinks are optionally available in versions sweetened with sugars or with non-caloric sweeteners.

Hot beverages

Hot beverages, including infusions. Sometimes drunk- chilled.

- Coffee-based beverages
- Cappuccino
- Coffee
- Espresso
- Café au lait
- Frappé
- Flavored coffees (mocha etc.)
- Latte
- Hot chocolate
- Hot cider
- Mulled cider
- Glühwein
- Tea-based beverages
- Flavored teas (chai etc.)
- Green tea
- Pearl milk tea
- Tea
- Herbal teas
- Roasted grain beverages

- Sanka
    - **Other**

Some substances may either be called food or drink, or accordingly be eaten with a spoon or drunk, depending on solid ingredients in it and on how thick it is, and on preference:

- Soup
- Yogurt

Though, a non-alcoholic beverage has been defined in a specialized manner to cover 'non-alcoholic beer',' non-alcoholic wine' etc, such a narrow meaning need not be given to a 'non-alcoholic beverage'. In the Bombay High Court judgment in the case of Food Specialties Ltd (97 STC 407) the Court had to decide whether ''Paloma Tea Mix, a powder to be mixed with water to make soft drink is a 'beverage or not. The Court observed that 'Beverage, as commonly understood, meant 'any liquid for drinking other than water' and is a name applied to drinks. The court ruled that the product in that case was not a beverage by itself but a **powder from a non- alcoholic beverage can be prepared**. It is seen that the Court has classified 'tea' as a non-alcoholic beverage. Therefore, all the beverages which do not contain 'alcohol' and not only those which are non-alcoholized can be classified as 'non-alcoholic beverages'. Non-alcoholic beverages' defined in such a manner would cover tea,coffee,etc as also fruit punch, fruit drinks etc.

In the present case, the product is in the form of a concentrate which has to be diluted with water before it could be consumed. It cannot be taken as it is. Therefore, it is clear that the product by itself is not a 'beverage' but a 'concentrate' from which the drink could be prepared. The 'Magno fruit drink' is undoubtedly a beverage and due to the absence of alcoholic content in it, can be said to be a 'non-alcoholic beverage'. It is a liquid meant for drinking and, as per the discussion given above, a 'fruit drink' or a 'fruit punch' is a non-alcoholic beverage. In respect to the contents of the product, I feel that the product falls under the description under schedule entry C-107(11) (g) and is taxable @ 4%. The schedule entry C-107(11) (g) was introduced in the schedule from 1.2.2006 and prior to 1.2.2006 there was no entry which could cover the impugned product. Therefore, the product would be covered by the residual entry E-1 and is taxable @12.5% from 1.4.2005 to 31.1.2006.

06. In the backdrop of the discussion held herein above, it is hereby ordered that,

ORDER

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

No.DDQ/11-2006/Adm.5/60/B-01 Mumbai, dt.23.12.2008

The sale of 'Mango Fruit Drink' sold through invoice no.060407 dated.26.04.06 is taxable @ 12.5% for the period 1.4.2005 to 31.3.2006 being covered by the residual entry and @ 4% from 1.2.2006 under schedule entry C-107(11)(g).

SANJAY BHATIA
Commissioner of Sales Tax,
Maharashtra State, Mumbai.