

Read : Application dt.21.7.2006 by M/s. E.I.Dupont India Pvt. Ltd. and holder of TIN No. 27760323995V.

Heard : Shri S.K.Batra, (Commercial Manager).

PROCEEDINGS

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

No.DDQ-11/2006/Adm-5/49/B- 2

Mumbai,dt. 7.12.2007

An application has been preferred by M/s. E.I.Dupont India Pvt. Ltd desiring determination on certain products. The details of the products are given in the table below -

Sr.No.	Description of the product	Invoice No.	Date
1)	Soy day granules	0027/MAH-3 Vat/6	27.05.06
2)	Soy day flakes	0027/MAH-3 Vat/6	27.05.06
3)	Soy day chunks	0027/MAH-3 Vat/6	27.05.06

The applicant has charged 12.5% on the sale of these products and has posed the following question :-

"Whether the product 'textured soy protein' (soya chunks, flakes and granules) would be covered by the Schedule Entry A-51 which is entry for papad and therefore tax free"?

2. FACTS OF THE CASE

The applicant company is a Joint Venture of Dupont Company with M/s.Solae India and is registered under the MVAT Act, 2002. The application states that the applicant produces quality healthy products. The present application is preferred on the sale of soya chunks, flakes and granules referred to singly as "Textured Soy Protein". The applicant claims the products to be healthy and nutritious and recognized in India and around the world for its

health benefits. It is claimed by the applicant that the sale of textured soy protein in the State is very nominal because of the high rate of VAT.

It is contended that the process of manufacturing textured soy protein is simple like that of making chakli etc. It is prepared by extruding soya flour into different shapes by imparting texture. The textured soya protein is consumed by mixing it in various spices. The product literature is also supplied by the applicant. The product literature gives the various recipes using the soya chunks, flakes and granules. The literature also attributes the following characteristics to the impugned products:

1. "Soy day is a first offering of the world renowned Solae Company that promises to add the goodness and taste of soya protein to everyday food. It is highly nutritious.
2. It is delectably versatile as it blends with all food preparations.
3. It is easy to use. It is ready to cook any time food. It can be cooked straight out of the box without any pre soaking.

3. CONTENTION

It is the contention of the applicant that it is covered by Schedule Entry A-51 as it is covered by the description 'papad'. In support of their contention, the applicant has submitted an determination order passed by the Commissioner of Delhi in which it is held by the Commissioner that 'soyabadi' is covered by the Schedule Entry C-58. The Schedule Entry C-58 reads as follows :-

Entry no 58	Papad & Wadi
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4. HEARING

The case was fixed for hearing on 30.10.2007. Shri S.K. Batra, attended on behalf of the applicant. He submitted that the product on which determination is desired by them is called 'textured soya protein'. It is also called soyabadi flakes/granuels/nuggets. He stated that the product is very nutritious and healthy. He also stated that the company is involved in the stage of manufacturing right from the raising of the crop. They give farmers special seeds

for high protein soyabean. The soya is then deoiled and the Deoiled cakes is called 'soyameal'. From the soyameal, the flour is prepared and from the flour the granules ,flakes, wadi are manufactured. He contended that the product would be covered by Schedule Entry A-51 as it is similar to 'papad'. In the alternative, it is contended that it would come under schedule entry C-107(11)(f) being 'food stuffs and food provision'. It is contended that the food is not ready to serve but it has to be cooked. It is claimed to be healthy for the heart as it reduces cholesterol of the body. The applicant also informed that packets containing the soya flakes, soya granules and soya chunks are sold to distributors for further sale to malls, departmental stores etc.

OBSERVATIONS

I have gone through the facts of the case. The schedule entries under consideration before me are as follows :-

A-51	(i) Papad except when served for consumption;	1.5.2006 to 30.09.2007
	(ii).....	

The schedule entry A-51 covers papad. The products sold by the applicant are soya granules, flakes and wadi. I fail to see any similarity whatsoever between papad and the impugned products. Therefore, I have no hesitation in holding that the products sold by the applicant is not covered by A-51. The only common factor is that they are both made from flour, and , I am afraid to say, the resemblance ends here.

In support of his contention, the applicant has relied on the determination order passed by the Commissioner of Sales Tax, Delhi in which the product was held as covered by Entry-58 of the first schedule of Delhi Vat Act. The schedule entry is reproduced earlier in this order. Unlike the corresponding schedule entry under the MVAT Act which covers only 'papad, the schedule entry existent under the Delhi Vat Act covers both 'papad and vadi' which led the

determining authority to classify the impugned products under the said entry. The schedule entry under the MVAT Act does not cover 'badi'. Therefore, the determination order under the Delhi Vat Act is not at all relevant to the present case as the schedule entries under consideration are not *pari materia*. Therefore, I see no point in referring to the determination order of the Delhi Sales Tax Act in reaching any conclusion here.

The other entry for consideration before me is Schedule entry C-107(11)(f) which is reproduced below.

107 (11)	a) Semi-processed or processed fruits, vegetables, meat, poultry and fish whether or not sold in frozen state or in sealed container.	1.5.2005 to 31.1.2006
	b) Fruits jams, jelly, pickle, sauce, porridge, marmalade, cottage cheese (paneer), honey, preserved fruits, fruit squash, fruit paste, fruit drink, fruit juice, vegetable juice, squashes, syrups, cordials,	
	c) Raw sea-food, raw meat, fruits an vegetables when sold in frozen state or in sealed container	

The entry reproduced above was in existence from 1.5.2005 to 31.1.2006. The broad categories covered by the entry are processed or semi-processed fruits, vegetables, meat and sea food. The category of food stuffs and food provisions was not covered by the schedule entry. The products sold by the applicant would not get covered by any of these categories as it is not fruit, vegetable, meat or sea food. Therefore, it would not fall under the entry as it existed from 1.5.2005 to 31.1.2006. Also, prior to 1.5.2005, there was no entry for food stuffs and food provisions. Therefore, the products would not get covered by the schedule entry C-107 (11) from 1.4.2005 to 31.1.2006

Subsequently, the entry was amended with effect from 1.2.2006. By virtue of the amendment, a separate category of 'Food stuffs and food provisions of all kinds' was added to it.

C-107(11) (f)	Food stuffs and food provisions of all kinds	01.02.2006 to
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	including raw, semi-cooked or semi-processed foods, ready to mix and ready to cook preparations excluding ready to serve foods, <i>Explanation.</i> – 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.	till date
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The Schedule Entry C-107(11)(f) covers food stuffs and food provision of all kinds including raw, semi cook or semi processed foods, ready to mix and ready to cook preparations excluding ready to serve foods. The compass of the concerned entry is discussed by me in the determination order in the case of M/s Monginis Foods Pvt. Ltd. and M/s Delicia Foods (No-DDQ-11-2007/Adm-2/25/B-1 and No-DDQ-11-2007/Adm-2/26/B-1 dt 6.11.07) wherein it was explained that the concerned entry would not include 'ready to eat foods'. The schedule entry specifically excludes 'ready-to serve' foods and the Explanation provided to the entry states that food served for consumption is also excluded from the scope of the entry. Both the exclusions are to be construed as below :

- The exclusion of 'Ready to serve foods in the main entry' excludes food ready to eat in any place.
- The exclusion of 'Food served for consumption' as given in the explanation excludes food served in a hotels, restaurants, eating houses, refreshment rooms, boarding establishments and other similar entities.

The question now before me is to see whether the products soya nuggets, flakes, chunks and granules are ready to serve foods or not. Also, it has to be seen whether they befall the exclusion provided through the Explanation.

WHETHER 'READY-TO-SERVE' FOOD?

The applicant had contended that the product is not available in 'ready to eat' form. The flakes, granules and nuggets cannot be consumed in the state in which they are sold by the applicant. Some processes have been to be done on them to make them edible and tasty as the products are odorous and not fit for

direct consumption. In view of this fact, the recipes which are made by using the product are also supplied by the applicant. The following are some of the recipes given:

1) **Soya day chana chat** :- This recipe is prepared by using soya flakes. Onion, tomato, chillies, salt, chat masala and lime juice have to be added to this soya flakes to prepare the salad.

2) **Soya day chilli chunks** :- Soya day chunks is used for this recipe. This dish is prepared by frying the chunks and adding ginger, garlic, paste, vegetables and chilly, sauces, pepper, vinegar, salt to it.

3) **Soya day samosa** :- This recipe uses soya day granules. It is prepared by mixing soya granules with potato, boiled peas, green chilly, and putting them inside a dough covering and deep frying them in oil.

The other recipes are soya day kabab, fritters, pasta, burger, pizza, upma, Uthappam, roti wrap, Vegetable pulav, salad, pepper soup, french beans, bhendi, Khir, kadai chunks. These products are made by using soya flakes, granules and nuggets. These granules, nugget and flakes are mixed, tossed and fried in various spices, vegetables and sauce in order to prepare the dishes.

The products cannot be eaten as they are- i.e in the state in which they are available. They are not ready-to-eat foods. The products as they are sold – in chunks, flakes and nuggets, have to be spiced up, seasoned, cooked after which they become ready-to-eat. They cannot be set or served immediately after being taken out of the packing. Some processes need to be done on them to make them palatable. Therefore, it is felt that they are not ‘ready-to-serve foods’ which are excluded from the schedule entry C-107(11)(f).

WHETHER FOOD SERVED IN HOTEL?

It also has to be examined whether the impugned product is food served for consumption. It is seen from the sale invoices that the products are not

served in hotels. The applicant, in the course of hearing, had informed that packets containing the soya flakes, soya granules and soya chunks are sold to distributors for further sale to malls, departmental stores etc.

It is, therefore, felt that the impugned products do not fall under the explanation provided to the said schedule entry.

From the aforesaid facts it is clear that the impugned products are neither ready to eat foods nor are they served for consumption in hotels. They are ready to cook /ready-to-mix preparations. Therefore, it is felt by me that they would be covered by Schedule Entry C-107(11)(f) by the expression 'ready to mix' and 'ready to cook' preparations. Also , I rely on the determination order passed in the case of M/s Shanti Food Products (DDQ/1191/Adm-5/154/B-2 dated 01.04.92) wherein it was held that 'soya nuggets' would be covered by the Schedule Entry C-II-27 which was the then entry for 'food stuff and food provisions.

In view of the above deliberation, I pass the order as follows :

ORDER

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

No. DDQ-11/2006/Adm-5/49/B-2

Mumbai, dt. 7.12.2007

- The products soya day granules, soya day flakes and soya day chunks sold through Invoice No. 0027/MAH-3/VAT/6 dt. 27.05.06 are covered by Schedule Entry E-1 for the period 1.4.2005 to 31.1.2006 and are taxable @ 12.5% .
- The said products sold through Invoice No. 0027/MAH-3/VAT/6 dt. 27.05.06 are covered by Schedule Entry C-107(11)(f) for the period 1.2.2006 onwards and are taxable @ 4%.

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