

- Read: 1) Application dated 06-11-2008 under Section 56 of The Maharashtra Value Added Tax Act, 2002 from M/s Indo Bakels Pvt. Ltd., holder of VAT TIN 27920014089V.
2) This office letter dt.23/4/2009,26/5/2009, 8/4/2011, 23/6/2011, 22/7/2011, & 18/8/2011
3) Applicant's letter dt.15/5/2009 and 20/6/2009

Heard : Shri Shivprakash (General Manager).

PROCEEDINGS

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

No.DDQ-11-2008/Adm-3/50/B-2

Mumbai, dt. 21/12/2011

The applicant M/s. Indo Bakels Pvt. Ltd.,holder of VAT TIN 27920014089V, having address at 43-C, Mittal Towers, Nariman Point Mumbai-400 021 has posed a question for determination as to the rate of tax applicable to the products described below:

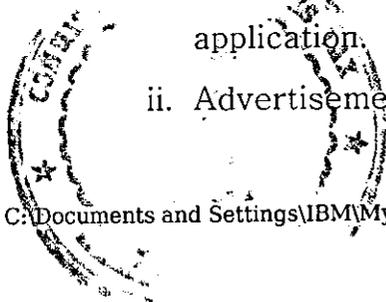
Product description	Invoice no	Date
Bakels Blue Berry Fillings (M) Deli Strawberry Filling Lafruta-Red Cherry Fillings	Inb/T/08- 09/267	18/06/2008
Deli Dark Cherry Filling	Inb/T/08- 09/267	4/04/2008
Bakles Rasplum Filling	Inb/T/08- 09/312	3/07/2008

02. **FACTS & CONTENTION**

The applicant named above is a registered dealer under the provisions of MVAT Act, 2002 engaged in import of fruit based fillings. It is stated that the above fruit based fillings are real fruit based product with fruit concentrate having upto 50%. These items are ready to use without any further process. It is also stated that fruit based fillings are fully ready for consumption which is already processed before packing. It is therefore contended that the impugned product would be covered by schedule entry C-107(11)(e) of the MVAT Act.

03. **DOCUMENTS SUBMITTED**

- i. Copy of chalan in form No.210 evidencing fees paid towards determination application.
- ii. Advertisement brochure.



iii. Letter dt.15.5.2009 and 20/6/2009

iv. Copies of invoice as mentioned above.

04. HEARING

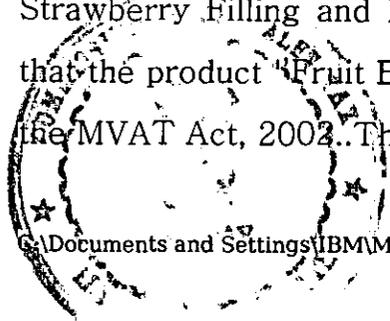
Shri. Shivprakash (General Manager) attended on behalf of the applicant for hearing on 11.10.2011 and on 1.11.11. He stated that the fruit based filling is fruit based where the percentage of fruit varies from 30% to 70% and other ingredients like sugar, water starch etc. He has further stated that this is a premium product used in filling of pies, muffins, cakes, tarts etc. It is an expensive product compared to the 'fruit flavoured fillings'. He stated that at present, he is charging 12.5% and they have been charging 12.5% right from 1.4.2005. It is contended that the product is covered by schedule entry C-107-11(e) as processed, semi-processed fruit etc.

05. OBSERVATIONS

Before proceeding further, I reproduce here the details of the product, invoice and information of the concern product.

Product description	Invoice no	Date	Whether information Submitted
Bakels Blue Berry Fillings (M)	Inb/T/08-09/267	18/06/2008	Yes
Deli Strawberry Filling			Yes
Lafruta-Red Cherry Fillings			No
Deli Dark Cherry Filling	Inb/T/08-09/267	4/04/2008	Yes
Bakles Rasplum Filling	Inb/T/08-09/312	3/07/2008	No

From the above it is seen that the applicant has not furnished the information/literature of all the products. Therefore I will deal with those products for which the invoice has been given and information has been submitted. I will thus confine myself only to giving determination on Bakels Blue Berry Fillings, (M) Deli Strawberry Filling and Deli Dark Cherry Filling. It is the contention of the applicant that the product 'Fruit Based Filling' is covered by the schedule entry C-107(11)(e) of the MVAT Act, 2002. The entry is reproduced as below:



C-107(11) (e)	Processed, semi-processed or semi-cooked fruits and vegetables including fruit jams ,jelly, pickle, sauce, porridge, marmalade, cottage cheese(paneer), honey, preserved fruits, fruit squash, fruit paste, fruit drink, fruit juice, vegetable juices, squashes, syrups, cordials, whether or not sold in frozen state or in sealed container.	5%
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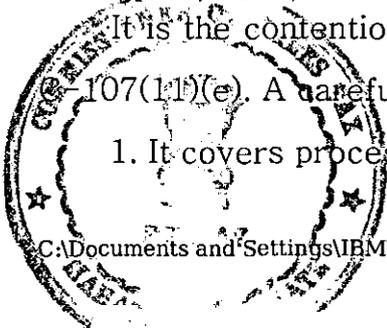
These items are imported in fully packed condition. These items are fully ready for consumption which is already processed before packing. During the course of hearing the applicant has submitted that the impugned product is fruit based where percentage of fruit varies from 30% to 70% and other ingredients like sugar, water, starch etc. The applicant has submitted the product literature, in which following information is given on the product:-

Product description	Invoice no	Date	% of Fruit content as per literature
Bakels Blue Berry Fillings (M) Deli Strawberry Filling	Inb/T/08-09/267	18/06/2008	25 50
Deli Dark Cherry Filling	Inb/T/08-09/267	4/04/2008	50

- DELIBLUEBERRY FIE FILLING-This is a ready to use bake stable blueberry filling with 50% real fruit content. It is ideal to decorate and fill pies, tarts and pastries. However the applicant has not submitted the invoice copy of this item.
- DELISTRAWBERRY PIE FILLING-This is a ready to use bake stable strawberry filling 50% real fruit content. It is ideal to decorate and fill pies, tarts and pastries.
- DELIDARK CHERRY PIE FILLING-This is a ready to use bake stable dark cherry filling with 50% real fruit content. It is ideal to decorate and fill pies, tarts and pastries.
- BAKELS BLUEBERRY AND APPLE PIE FILLING-This is an economical and consistent filling with 25% real fruit. It is suitable for the production of fruit pies, flans, Danish pastries, cheesecakes and fondants.

It is the contention of the applicant that the product is covered by schedule entry C-107(11)(e). A careful perusal of the entry C-107(11)(e) would show the following, -

1. It covers processed, semi processed or semi cooked fruits and vegetables.



2. The scope of the entry is described by the word 'including' which means that the entry includes products other than those described in it.

3. The products specifically covered by the entry are fruit, jams, jelly, pickle, sauce, marmalade, porridge, paneer, honey, preserved fruits, fruit squash, fruit paste, fruit drink, fruit juice, vegetable juice, etc.

In order to be covered by the entry, the product fruit based filling has to first fulfill the description as given at (1) above i.e. it should befall the category of processed, semi processed or semi cooked fruits and vegetables. From the literature, it is seen that percentage of fruit varies from 25% to 50%. Also the applicant has produced the literature of the 'Strawberry filling' which shows that the product contains the following ingredients.

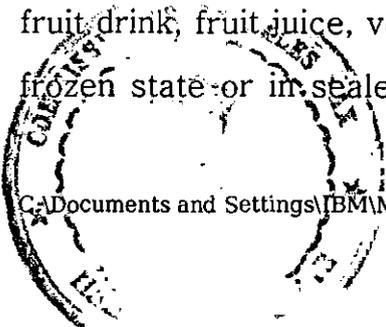
Ingredients - Strawberry (50%), water, sugar, modified starch e 1442, citric acid E 330, potassium sorbate E202, natural identical strawberry flavour, Allu Red E 129.

Also the applicant has produced the literature of the 'Blueberry filling' which shows that the product contains the following ingredients.

Ingredients - Blueberry (50%), water, sugar, modified starch e 1442, citric acid E 330, potassium sorbate E202, natural identical blueberry flavour, Allu Red E 129, Indigotine Blue E 132.

The impugned product is used as a filling in cakes, pastries etc. The question is as to whether it can be called a 'processed fruit'. In the case of Pepsico India Holdings, the Madras High Court (25VST632) observed that in common parlance processing means cleaning, cutting, grinding, filtering, adding additives and preservatives, freezing etc and not frying in oil which would altogether take away its naturalness by becoming a cooked food. Following this definition, the impugned product cannot be held as 'processed fruit' as though the process of manufacturing is not given, it is clear that a number of ingredients are added to the basic fruit in order to prepare the product. After the addition or blending, a different product comes into existence which has no resemblance to the original fruit.

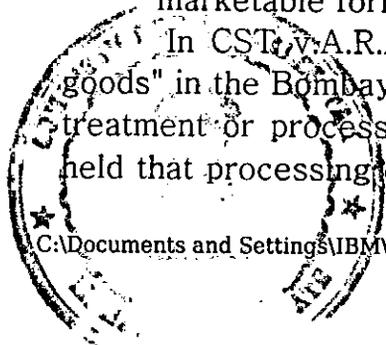
The schedule entry C-107(11)(e) includes fruit jams, jelly, pickle, sauce, porridge, marmalade, cottage cheese(paneer), honey, preserved fruits, fruit squash, fruit paste, fruit drink, fruit juice, vegetable juices, squashes, syrups, cordials, whether or not sold in frozen state or in sealed container in the definition of 'processed fruit'. The items are



included in the entry by way of special inclusion. As held by the Himachal Pradesh High Court in the case of M/s Pepsico India Holdings, the specific inclusion of items like jam, jelly, pickles, etc., which in common parlance are not understood to be items of processed vegetable or fruit, gives sufficient indication that processed vegetable or fruit appearing in entry 80 (the entry under the HP VAT Act similar to the one under consideration) has been given a special or technical meaning as distinguished from the ordinary meaning. If a processed vegetable or fruit is to be understood in the ordinary way, none of the items specifically included in entry 80 could have been so included. What the Court has expounded is that jam, jelly are ordinarily not understood as 'processed fruits' and they are included by way of special inclusion. If they were not specially mentioned they would not come under the entry. The impugned product before me is not included in the entry and it is also not 'processed fruit' by virtue of the meaning of the term 'processed'. Therefore, it would not be covered by the entry.

..”In the case of Saraswati Sugar Mills vs Haryana State Board And Ors on 22 October, 1991 Equivalent citations: 1992 AIR 224, 1991 SCR Supl. (1) 523, the Supreme Court observed,” The use of the word processing is also significant. Processing of vegetable products industry are normally understood in the sense they relate processing of vegetables which even after processing retain its character as vegetable. Processing: Section 3(1), Marine Product Export Development Authority Act, 1972 defines processing in relation to marine products, as including the preservation of such products as canning, freezing, drying, salting, smoking, peeling or filleting or any other method of processing which the authority made by notification in the Gazette of India, specified in this behalf. Section 2(g) of the Agricultural and Processed Food Products Export Development Authority Act, 1985 defines processing in relation to scheduled products as including the process of preservation of such products such as canning, freezing, drying, salting, smoking, peeling or rilleting and any other methods of process- ing which the authority made by notification in the official Gazette specified in this behalf. Thus processing as generally understood in marine, agricultural and food products industries is an action, operation or method of treatment applying it to something. It is refining, development, preparation or converting of material especially that in a raw state into marketable form. ...

In *CST v. A.R. Alladin*, AIR 1964 Guj. 27 the expression "who processes any goods" in the Bombay Sales Tax was held to refer to the subjecting of any goods to a treatment or process. In *Addl. CIT v. Farrukhabad Cold Storage*, 1977 (2) ITJ 202 held that processing of goods means that the goods must be adopted for a particular



use. The variety of acts performed in respect of goods or their subjection to a process need not be such as may lead to the production of any new article. The act of subjecting ' goods to a particular temperature for a long period of time as in cold storage amounts to processing of goods. On the other hand manufacture is a transformation of an article which is commercially different from the one which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture some- thing is brought into existence which is different from that originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. Processing essentially effectuates a change in form, contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something..”.

The Supreme Court has given a concise meaning to the term ‘processing’. The product before me is not processed fruit but a product manufactured out of fruit as one of the ingredients. The processes undergone by the fruit is such that the ready product before me is a commercially different product not bearing any resemblance to the original fruit. In such a case, the ‘fruit based filling’ cannot be called a ‘processed fruit’.

06. PRAYER FOR PROSPECTIVE EFFECT

The applicant has prayed for prospective effect. Prospective effect is granted in only in certain cases, where situation warrants so. In the instant case, there is no statutory misguidance, also schedule entry is clear. There is no ambiguity or no possibility that the schedule entry is likely to be interpreted in different way. There is no ambiguity in the schedule entry C-107(11)(e) and the prayer for prospective effect is rejected.

07. In view of the deliberations held above, the following order is passed.

ORDER

[Under Section 56(1)(e) of The Maharashtra Value Added Tax Act, 2002]

No.DDQ-11-2010/Adm-3/50/B- 2

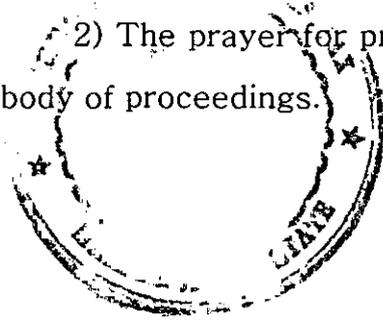
Mumbai, dt. 2/12/2011

1) It is hereby held that the transaction of sale of the impugned product through the following invoices would not be covered by schedule entry C-107 (11) (e) of the MVAT Act, 2002. It would instead get covered by the residual entry 'E-1' and

would be taxable @ 12.5%.

Sr. No.	Product description	Invoice no	Date
1	Bakels Blue Berry Fillings (M)	Inb/T/08- 09/267	18/06/2008
2	Deli Strawberry Filling		
3	Deli Dark Cherry Filling	Inb/T/08- 09/267	4/04/2008

2) The prayer for prospective effect is hereby rejected for the reasons stated in the body of proceedings.



(Sanjay Bhatia)

Commissioner of Sales Tax,
Maharashtra State, Mumbai.