

Read : Application dt.25.06.2012 by M/s. A1 Confectionaries Company Pvt. Ltd.
Heard : Sh. Ashish Shivdasani & Sh. Ranjeet Shivdasani, both as Directors, attended the hearing.

PROCEEDINGS

(u/s 56 (1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2012/Adm-6/19/B- 6

Mumbai, dt. 26/12/2014

An application is received from M/s. A1 Confectionaries Company Pvt. Ltd. situated at 801, Ben Hur Building, 32, Narayan Dabalkar Road, Mumbai-400 006, requesting determination of the rate of tax applicable to the product 'Waffle' as sold under invoice no. 1 dt.14.06.2012. The description in invoice is 'Vanilla Waffles' and 'Cinnamon Waffles'.

02. FACTS & CONTENTION

The application states thus :

"We are manufacturing Waffle which is kind of 'Bread' consumed by the people at large. Basically this concept is foreign oriented. This Waffle is made out of using the raw material like Wheat Flour, Margarine, Sugar Syrup, Yeast, Baking Powder, Salt and Lysol, to make it more tasty sugar & Sugar Syrup with flavor of Vanilla or Cinnamon etc. is used. After assembling & mixing all these ingredient it is baked and it has been divided with proper size almost like a small cake.

Since this is basically, Bread which is consumed by common people at large and used widely at house as substitution of Chapatti or Roti. We are giving the full details of process of baking this bread stage wise which is called as a bread making process. This product is tax free in countries like Singapore. In foreign countries on the western countries it is also treated tax free being the food for the common people. Under Circumstances we kindly request you to please intimate us the MVAT Rate for or product. All kinds of bread except Pizza bread (which is taxable at 5%) is totally tax free. We are sending here with all literature explaining the process this kind of bread. We are sending herewith two sample Bill for the sale of there 'waffle', since we are not aware of the MVAT rate; we have not levied any MVAT."

The attachments alongwith the application state thus "

"The Waffle Process

Main ingredients: Wheat Flour, Sugar, Margarine, Sugar Syrup, Yeast, Baking Powder, Salt, Flavoring (Vanilla or Cinnamon etc.), and Lysol.

The Waffle has six stages to the process which, is similar to making bread, they are as follows;

1. Accurate weighing of the ingredients.
2. Kneading and mixing of the dough.

The kneading distributes the yeast evenly through the dough, and develops and strengthens the gluten in the flour to form the framework of the Waffle.

3. Proofing of the Dough.

The dough is placed in a warm, moist, draught-free place to allow the dough to rise/proof.

4. Next, it is divided by a bun divider and rounder; in to the proper sizes and weight that is required.

Then it is proofed for a second time.

5. Then the proofed buns are then passed through an oven for the baking process, and collected for packing after they are baked and cooled."

In response to letter dt.24.02.2014 calling for certain details, the applicant by the communication dt.Nil (received on dt.04.04.2014) informed that -

"This product comes in the same category as bread, as the process of making waffles is very similar to that of baking bread. We use a dough kneader (as used when making bread), a Bun dough divider (as used when making bread), a Proofer for raising the dough (similar; as used in bread making).... Waffles do not require any cooking/frying/baking, before consumption of the product..."

03. HEARING

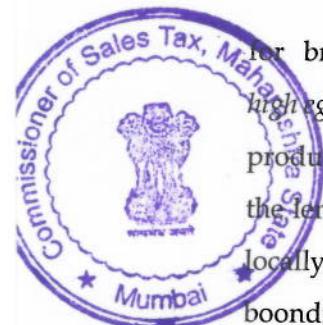
Shri Ashish Shivdasani [Director] & Shri Ranjeet Shivdasani [Director] attended the hearing on dt.17.09.2014. It is claimed that the product 'waffle' is covered under the schedule entry A-7 - "*Bread (excluding pizza bread), in loaf, rolls or in slices, toasted or otherwise except when served for consumption*". It is contended that the product is a 'bread', the reason being that the process of manufacturing 'waffles' is the same as that of bread. It is further stated that the applicant is a manufacturer and supplies are made to the retail shopping outlets. Therefore, there is no question of service for consumption. The applicant informed that the shelf life of the product is 6-8 weeks.

When it was enquired as to any claim as regards any other schedule entry, it was informed that other manufacturers are charging tax @ 5%. It was categorically stated that they are not aware of any other schedule entry. However, they admitted to being aware that 'waffles' is not listed in any of the schedule entries under the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002). A prayer for prospective effect was made. However, it was informed that they have been selling the product and paying taxes @ 12.5%.

04. OBSERVATION

I have gone through the facts of the case. The product for determination is "Waffle". I have seen the sample of the product. It has a pattern of slots or small pockets, a grid formed by an arrangement of horizontal and vertical lines across the face on the top side. The product is described on the Net as '*a leavened batter or dough cooked between two plates, patterned to give a characteristic size, shape and surface impression*'. There are many variations based on the type of waffle iron and recipe used. It is ready to eat, and prepackaged for consumption. It can be eaten straight out of the packet, but also can be served warm (once removed from the packet), and garnished with chocolate, nutella, fruit, ice-cream, or whipped cream, or even honey or maple syrup. The applicant claims that the process of manufacturing 'waffles' is the same as that of bread and therefore, the product is a 'bread'. *Could this be a criterion for classification of commodities?*

The information on the Internet says that the dough for waffles is similar to the type used for brioche (*a pastry of French origin that is similar to a highly enriched bread, and whose high egg and butter content give it a rich and tender crumb*). Some data says that bread flour is used to produce an especially chewy waffle. We are well aware that many a snacks commonly eaten across the length and breadth of the State include items made from Bengal gram flour/chana dal flour locally known as besan flour. From the same flour, one makes spicy snacks item such as Sev, boondi, etc. as well as laddoo, a sweet fare. Thus, merely because the dough or the process of making the dough is the same, it does not make two products made therefrom and known categorically as distinct items as being one and the same. In the present case, 'bread' and 'waffles' are two items having a distinct identity. As mentioned earlier, 'waffles' has a characteristic shape.



Bread and waffles are neither synonymous nor synonymously known so. When one wants to buy a 'waffle', one has to say so specifically. Under no circumstances, could one be offered a 'waffle' when asked for a 'bread'. The converse is equally true. Their difference can be seen from the fact that there are machines specially designed for making waffles. A bread making machine and a waffle making machine are not of the same type. Waffle makers come in all shapes and sizes. Even though at its most basic, the appliance is just two heated plates designed to cook a batter - or dough - between them. A bread making machine has a bread pan and no arrangement of plates as in a waffle making machine. Yet another point about differentiation between waffles and bread is significant. It's the shelf life of the two products. The shelf life of bread is 2-3 days and not beyond a week. Whereas the impugned product, as admitted by the applicant, has a shelf life of 6-8 weeks. This aspect about the impugned product should make it obvious that the two products cannot be said to be one and the same. The taste of these products and the manner in which they are consumed would also add to the difference between the two.

In view of all above, the applicant's contention that the product be classified as 'bread' does not find favour with me. An attempt to draw a similarity on the basis of the manufacturing process of 'bread' lacks in merits. Even the license granted by the Food Safety and Standards Authority of India classifies the impugned product under the category of 'Bakery products, Waffles'. There is no specific schedule entry for the impugned product under the Schedules appended to the MVAT Act,2002. In view thereof, the product finds placed in the residuary schedule entry E-1, thereby taxable @12.5%.

PROSPECTIVE EFFECT

The applicant has prayed for prospective effect to the determination order in case the contention as put forth is not acceptable. As discussed above, bread and waffles are two distinct items. Therefore, stretching for similarity on the basis of the process of making waffles being similar to that of baking bread, is not a wise way to classification of products. Nor does the position as appearing in other countries prove useful unless a parity in provisions under a statute and attending circumstances could be had. A classification of a commodity is invariably based on interpretation of provision as available in a statute. In the present case, the applicant also admits to there being no specific schedule entry for the impugned product and therefore, having charged tax @12.5%. In the circumstances, no case is made out for me to consider the request favorably.

06. In view of the deliberations held hereinabove, it is determined thus -

ORDER

(u/s 56 (1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2012/Adm-6/19/B- 6

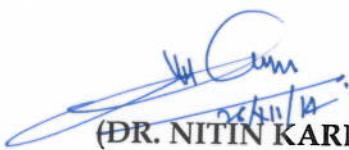
Mumbai, dt. 26/12/2014

For reasons as discussed in the body of the order,

- a. the product 'Waffle' is not a 'bread' as understood by the schedule entry A-7 of the MVAT Act,2002.
- b. the rate of tax applicable to the product as sold under invoice no. 1 dt.14.06.2012 is 12.5%, being covered by the residuary schedule entry E-1 of the MVAT Act,2002.

the request for prospective effect is rejected.




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI