

Read: Application dt.31.07.2012 by M/s. Indagro Foods Ltd. holder of TIN 27060032992V/C.
Heard:Smt. Ranganekar [CA] and Shri Chandrakant Naik [Asstt. General Manager]

PROCEEDINGS

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

No.DDQ-11/2012/Adm-6/23/B- 1

Mumbai, dt. 5/12/2014

An application has been made by M/s. Indagro Foods Ltd., situated at Allana House, Allana Road, Colaba, Mumbai-400 001, requesting to know the rate of tax on the following cake mixes sold under Tax Invoice No.U-65/12-13/R-I/83 dt.12.07.2012 :

1. Cake Premixes Super Veg Cake Mix (Brand Name - Pristine)
2. Cake Premixes Egg Less Chocolate (Brand Name - Tristar)
3. Cake Premixes Dark Chocolate (Brand Name - Pristine)

02. OBSERVATIONS

I have gone through the facts of the case. The products for determination are :

- Cake Premixes Super Veg Cake Mix (Brand Name - Pristine)
- Cake Premixes Egg Less Chocolate (Brand Name - Tristar)
- Cake Premixes Dark Chocolate (Brand Name - Pristine)

These are available in powder form in sealed packing. The ingredients and method for preparation of each of the impugned products, as mentioned on the packing, is thus -

"Pristine Super Vegetarian Cake Mix

Ingredients :

Wheat flour, Sugar, Wheat starch, Whey Protein Concentrate (Milk Based), Emulsifiers (E471, E477, E472b, E472e, E481), Leavening (Sodium Bicarbonate E500, Sodium Aluminium Phosphate), Skim Milk Powder (Cow's Milk), Dextrose, Salt, Flavour (Vanilla - Artificial). Contains; Wheat and Milk, May contains traces of Soya.

Recipe:

Super Vegetarian Cake Mix	1.000 kg
Water	0.600 kg

Method for Sponge :

1. Add water and Super Vegetarian Cake Mix.
2. Blend with a whisk on low speed for 1 minute then scrape down the bowl.
3. Mix on high speed for 5 minutes then on low speed for 1 minute.
4. Scale as required.
5. Bake at 180°C for 25 to 30 minutes.

Tristar Egg Less Chocolate Cake Mix

Ingredients :

Wheat flour, Sugar, Cocoa powder, Whey protein (Cow's milk), Palm oil based Vegetable shortening, Sodium bicarbonate E500, Sodium Aluminium Phosphate (E 451), Emulsifiers palm oil based (E471, E477, E472b, E472e), Salt, Flavors (Chocolate and Vanilla artificial).

Contains: Wheat and Milk, May contains traces of Soya.

Suggested Recipe:

Tristar Egg less Chocolate cake Mix	1000 gm
Water	500 gm
Oil	100 gm

Method :

1. Add mix, water and oil to the mixing bowl.
2. Blend with a whisk on low speed for 1 min.
3. Mix 5 to 7 minutes then on medium speed. Scrape down the bowl and mix on slow speed

for 1 min.

- Scale as required in a previously greased pan.
- Bake at 180°C for to 30 min (for batter weight 350 gm)

Tristar Dark Chocolate Cake Mix

Ingredients :

Sugar, Wheat flour, Cocoa powder, Refined Sunflower Oil, Wheat starch, Leavening, Sodium bicarbonate E500, Sodium aluminium phosphate E451, Di Calcium Phosphate E450, Whey powder, Emulsifier, Mono and Diglyceride esters of Lactic acid E472b (Palm oil base), Propylene Glycol Mono and Diesters of Fats and Fatty Acid E477(Palm oil base), Salt, Sodium CMC E466, Sodium alginate E401, Sodium Steroyl Lactylate E481, Flavor Chocolate, Vanilla, (artificial).

Suggested Recipe:

Dark Chocolate Cake Mix	1000 gms
Eggs	600 gms
Water	200 gms
Oil	100 gms (Optional)

Method :

Add Eggs, water, oil and Dark chocolate cake mix in a mixing bowl and blend with a whisk on low speed for 1 min.

Scrape down the bowl, mix on medium speed for 5 min.

Scale as required and bake at 180 C for 25 min."

The bill submitted for determination is of dt.12.07.2012 and as pointed by the applicant, the schedule entry C-107(11) (f) as re-introduced in April 2012 reads thus – “*Raw, semi cooked, semi processed, readymix and ready to cook food preparations, sold in sealed containers excluding ready to eat food and those covered by clause (a) to clause (e) above.*” The schedule entry C-107(11) also has an Explanation which reads thus – “*The items referred to in clause (a) to clause (f) will not be covered by the scope of this entry when those are served for consumption*”. The impugned products are food preparations sold in sealed containers. They are not ready to eat food preparations and cannot be eaten as it is. To consume them, water and oil has to be added to the mixture. The impugned products are neither ‘ready to eat’ nor ‘served for consumption’. Therefore, both the exclusions would not be applicable to the impugned products. It is seen that the product is in powder form. From a reading of the method of preparing cakes from the impugned cake mixes, it is seen that water and oil are to be added to the impugned product mixes in powder form. The mixture is to be blended with a whisk. This mixture, then, is to be baked at a certain temperature for a certain period of time. In view thereof, I am inclined to agree to hold that the impugned products are covered by the schedule entry C-107(11)(f) of the Maharashtra Value Added Tax Act, 2002, thereby attracting tax @5%. The applicant’s contention about the applicable schedule entry not being disputed, there arises no occasion to deal with the arguments or the request for prospective effect. However, I have to mention here that the applicant was collecting tax @12.5% on the impugned products upto 30.11.2012. Even the impugned bill shows tax collection @12.5%. The aforesaid entry was introduced w.e.f 01.04.2012. The rate of tax being decided, the excess tax collection would stand forfeited as per the applicable provisions under the MVAT Act,2002.



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

ORDER
(under section 56(1) (e) of the MVAT Act, 2002)

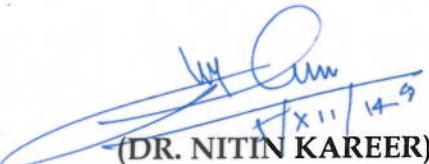
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Mumbai, dt. 5/12/2014

The rate of tax on the following cake mixes sold under Tax Invoice No.U-65/12-13/R-I/83 dt.12.07.2012 would be 5%, being covered by the schedule entry C-107(11)(f) of the Maharashtra Value Added Tax Act,2002 :

1. Cake Premixes Super Veg Cake Mix (Brand Name - Pristine)
2. Cake Premixes Egg Less Chocolate (Brand Name - Tristar)
3. Cake Premixes Dark Chocolate (Brand Name - Pristine)




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI