

Read: Application dt.29.01.2011 by M/s.Brittannia Industries Limited.

Heard: Shri Vinayak Patkar, Advocate & Shri V.M. Shinde, Sr. Accounts Officer.

## PROCEEDINGS

(under section 56(1) (e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ/11-2011/Adm.3/5/B- 3

Mumbai, dt. 14/11/2014

The applicant, M/s. Britannia Industries Limited, having address as Reay Road (East), Mazgaon, Mumbai-400 010, seeks determination of the rate of tax applicable on the products sold through the invoices as under :

| Sr. No. | Name of the Product | Invoice No. | Date       |
|---------|---------------------|-------------|------------|
| 1.      | HS Chinese Poha     | 30998284    | 24.01.2011 |
| 2.      | HS Healthy Veg Poha | 30998285    | 24.01.2011 |

### 02. FACTS & CONTENTION

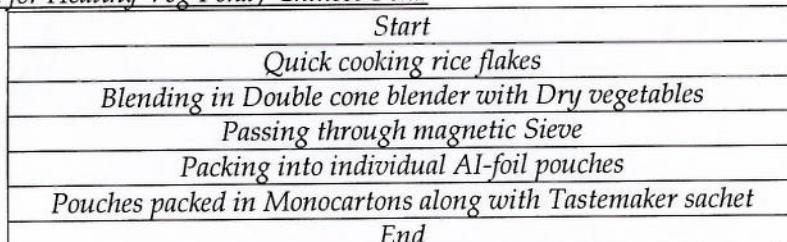
The application states thus -

1. "The applicant is the Public Limited Company registered under the MVAT ACT, 2002 (herein after called the Act) Under TIN No.27490000018v. The applicant deals in various types of food products.
2. The applicant has recently launched 'Poha' in the market under the name and style of 'Chinese Poha' and 'Healthy Veg. Poha'. Such 'Chinese Poha' or 'Healthy Veg. Poha' is nothing but 'Poha' accompanied with mix masala and dried vegetables which the cook may require for cooking different preparations of poha.
3. The applicant is of the view that both the products are covered by the Entry no.A-39 of the MVAT ACT, 2002 which reads as "Poha, lahya and chirmura".
4. Majority of the customers of the applicant are of the firm view that both the products are covered by the abovementioned entry A-39. But few of them also feel that it may not be so covered. Hence the dispute.
5. The applicant is forwarding herewith the sale invoice of both the products.
6. The applicant prays that the rate of tax on the sale of these products may be determined u/s 56(1)(e) of the Act.
7. The applicant further prays that in case of any adverse determination, it be directed that the determination should not affect the liability of the applicant till the date of determination."

In reply to letters dt.21.02.2014 and dt.10.04.2014, calling the applicant to furnish details about the products, a communication dt.14.05.2014 informed thus :

- Manufacturing process

Flow Chart for Healthy Veg Poha / Chinese Poha



- The entry A-39 is wide enough to include therein the Poha with mixed masala and dried vegetables.
- The applicant is selling these products under the name 'Poha' only.
- The products have now been discontinued.

### 03. HEARING

Shri Vinayak Patkar, Advocate & Shri V.M.Shinde, Sr. Accounts Officer attended the

hearing on dt.17.09.2014. The applicant has submitted a bill for the period 2010-11. However, it is informed that assessment for the said year has not yet been completed. The applicant was asked to provide the product details including the packing data. It was contended thus -

- The products come in a box packing and the box contains the different ingredients to make the Poha. These ingredients are -  
Chinese Poha - Poha, carrot bits, spring onion bits, corn, tastemaker sachets.  
Healthy Veg Poha - Poha, carrot bits, green peas, tastemaker sachets.
- The claim of the applicable schedule entry is A-39 - "Poha, lahya and chirmura".
- The applicant wishes to place reliance on the following judgments to make a point as regards specific entry as against residuary entry ;-

- a) Bharat Forge - 1990 (4 ELT 525) wherein the Hon. Supreme Court says that if there is a reasonable claim in specific entry then the product should not be sent to the orphanage of the residuary entry.
- b) Bradma India (140 STC 17 SC) where the Hon. Court says that specific entry should be liberally construed as against residuary entry.

#### 04. OBSERVATIONS

I have gone through the facts of the case. The products for determination of rate of tax are 'Chinese Poha' or 'Healthy Veg. Poha'. The ingredients of the impugned product as understood from the Systems & Process sheet submitted by the applicant are thus :

**Chinese Poha** - Rice flakes (Poha), carrot bits, spring onion bits, corn, tastemaker sachets.  
**Healthy Veg Poha** - Rice flakes (Poha), carrot bits, green peas, tastemaker sachets.

The website of the applicant describes the products thus :

##### **Healthy Veg Poha**

*The tang of cumin, black pepper and turmeric combined with beaten rice and vegetables for one of the lowest fat breakfast options available in the market.*

##### **Chinese Poha**

*Add an oriental twist to your day with a subtly flavored soy sauce, spiced with green chilli, garlic and a hint of pepper.*

##### **Milestones for the year 2011**

*Always committed to constant innovation, Britannia launched Britannia Healthy Start in Mumbai in January 2011. Specially designed with Indian tastes in mind, Healthy Start is a complete range of ready-to-cook breakfast mixes of Upmas, Pohas, Porridges and Oats that are healthy, delicious, and take just 5 minutes to cook! This is the only product range in its category that combines the natural nutrition of multi-grains, 100% real vegetables, pulses and nuts all in one pack.*

Thus, the products can be described as containing 'Poha' and other ingredients. Though the products are claimed to be sold as 'Poha', it can be seen and the applicant, too, agrees that the impugned products are Poha with mixed masala and dried vegetables. With this background, I find that the applicant has laid claim to the schedule entry A-39 of the Maharashtra Value Added Tax Act,2002 (MVAT Act, 2002). The entry reads thus - "Poha, lahya and chirmura". Thus, it is the claim of the applicant that the impugned products are covered by the words 'Poha' as appearing in the aforesaid entry. Poha, flattened rice (also called beaten rice) is a dehusked rice which is flattened into flat light dry flakes. It is known by a variety of names. In Maharashtra, it is known as 'Poha'. These flakes of rice swell when added to liquid, whether hot or cold, as they absorb water, milk or any other liquids. The thicknesses of these flakes vary between almost

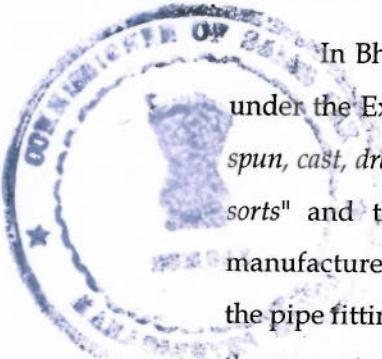
translucently thin (the more expensive varieties) to nearly four times thicker than a normal rice grain. This easily digestible form of raw rice is very popular and is normally used to prepare snacks or light and easy fast food in a variety of Indian cuisine styles, some even for long-term consumption of a week or more. This 'poha' can be put to use in a variety of ways. It can be eaten raw by immersing it in plain water or milk, with salt and sugar to taste, or lightly fried in oil with nuts, raisins, cardamoms, and other spices. In Maharashtra, poha is cooked with lightly frying mustard seeds, turmeric, chili powder, finely chopped onions and then moistened poha is added to the spicy mix and steamed for a few minutes. Before one sets to adjudicate as to whether the impugned products find placed in the schedule entry A-39, one has to bear in mind that the said entry seeking to cover 'Poha' is placed in the Schedule 'A' appended to the MVAT Act,2002. The goods placed in this Schedule attract 'Nil' rate of tax. As can be seen, the entry covers 'Poha', the flattened rice in flat light dry flakes. The Schedule 'A' covers cereals and pulses, fresh vegetables, garlic and ginger, sugar, etc. amongst other things. It is in this league that we find the articles placed in the present entry. The entry certainly is not designed to cover preparations made from 'poha'. The impugned products are preparations made from 'Poha'. The website of the applicant describes the impugned products as '*breakfast mixes*'. It would suffice to conclude that the impugned products are a category of 'convenience foods'. The schedule entry A-39 is not intended to cover products made from 'poha'. The impugned products with the varied ingredients do not satisfy the description of 'poha'. The entry covers 'poha' and the impugned products are not 'poha' simpliciter. A mixture of vegetables, onions, corn, green peas, spices, etc. can, by no stretch of imagination, be termed as 'poha'. I am convinced that the impugned products not being 'poha' *per se* would not be covered by the schedule entry A-39. Despite the situation being as obvious as this, I would look at the arguments tendered in favour of coverage under the said entry. The applicant has argued thus -

- *the impugned products are nothing but 'Poha'.*
- *the entry A-39 is wide enough to include therein the Poha with mixed masala and dried vegetables.*

We have seen above as to what is 'poha' and further as to what the impugned products are made of. A study of both these doesn't make it hard to infer that the present products are not the 'poha' as intended to be covered by the entry A-39. To deal with the above arguments, I have to invite the attention of the applicant to the fact that when preparations are made using a product and which includes the adding of other ingredients too, the original product to which the other ingredients were added ceases to retain its identity. The resultant product is a commodity having a new identity and distinct characteristics. In the present case, could a person intending to buy 'poha' be offered the impugned products as 'poha'? No, any such proposition would be met with rejection outrightly. We have seen that 'poha' can be put to a variety of uses. If it is intended to make a sweet dish from 'poha' then the impugned products with the enlisted ingredients could not serve to make the dish in the same way as could be made from 'poha', the

dehusked rice flattened into flat light dry flakes that we all know. Cloth is used to make garments. However, the garments made from cloth are known by the style in which the cloth is put to use as in a salwar-kameez or a sherwani. Is it the case that we refer to a dress or a shirt as 'cloth'? The answer lies not in the affirmative for the simple reason that the cloth has lost its identity when its utilised for the making of the dress or the shirt. The applicant's argument is that the entry A-39 is wide enough to include therein the Poha with mixed masala and dried vegetables. No such inclination is given by the schedule entry. If the applicant's argument is valid then the word 'churmura' (*a type of puffed grain made from rice*) as appearing in the entry would mean to cover 'bhel', a preparation made from 'churmura' (*alongwith other ingredients such as chopped onions, potatoes & raw mangoes, masala chana dal (split bengal gram), roasted peanuts & chana, nylon sev, etc.*). If such was the case then the legislature could not have carved out entries for 'ready to mix' food preparations. Legislative intention could not be so loosely interpreted and liberal interpretation in no manner means stretching to accomodate those which are not even remotely associated with the entry. Doing so would be an attempt to frustrate the dictat of the legislation. Without any further deliberation, I have to observe that the impugned products with the ingredients as vegetables, onions, green peas, spices, etc. are not 'poha' and therefore, would not merit inclusion under the schedule entry A-39. There is no specific schedule entry which covers the impugned products. In view thereof, the products would be placed in the residuary schedule entry E-1, thereby liable to tax @12.5%.

To buttress his arguments, the applicant has sought to place reliance on a few case laws. I set out to ascertain the applicability of these case laws to the facts of the present case.



In Bharat Forge (cited supra), the product involved was 'pipe fittings' and its coverage under the Excise entry "*Pipes and tubes (including blanks therefore) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded*". The Hon. Court held that the use of the words "*all sorts*" and the reference to the various processes by which the excisable item could be manufactured set out in the tariff entry were comprehensive enough to sweep within their fold the pipe fittings. No such situation is found in the present case. The entry under consideration in the present proceedings is clear in its import and seeks to cover 'poha', the flat light dry flakes and not a preparation of varied ingredients made therefrom. Further, the preparation in the form of the impugned products could not be put to the same use as 'poha', the item covered by the entry.

In Bradma India (cited supra), the dispute revolved around a general entry as against a specific entry (electronic goods and electronic cash registers) and on the basis of the words used for the purposes of the entry, the dispute was resolved by the Hon. Court. As regards the facts surrounding the impugned products, there is no case of a dispute revolving interpretation under a general entry as against a specific entry. In fact, there is no specific entry for the impugned

products. Therefore, the products are certain to be sent to the orphanage of the residuary schedule entry.

Thus, I have to conclude that both the case laws pointed by the applicant are not relevant to the facts of the present case. In the present case, both by common parlance meaning as well as legislative intention, the impugned products are not covered by the schedule entry A-39 of the MVAT Act,2002.

#### 05. PROSPECTIVE EFFECT

The applicant has prayed that the determination order be made prospective, if the contention as regards the applicable schedule entry is not acceptable. We have seen the impugned products as well as the schedule entry under which claim is sought to be laid. It did not require much knowledge to infer that the 'poha' as understood by the impugned schedule entry covers plain 'poha' and not the impugned products which are preparations containing an assortment of ingredients including 'poha'. There was neither a case of statutory misguidance. In the circumstances, the request for prospective effect is visibly lame and hence, merits no case for favourable consideration.

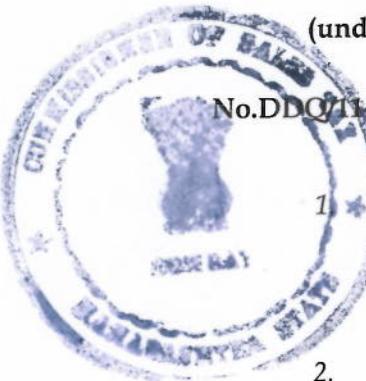
06. In view of the detailed deliberations hereinabove, it is determined thus -

### ORDER

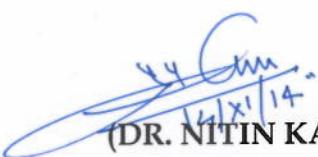
(under section 56(1) (e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDO/11-2011/Adm.3/5/B-3

Mumbai, dt. 14/11/2014



1. The products 'Chinese Poha' or 'Healthy Veg. Poha' are not covered by the word 'poha' as appearing in the schedule entry A-39 of the Maharashtra Value Added Tax Act, 2002.
2. In absence of a specific schedule entry, the products sold in the invoice nos. 30998284 & 30998285 dt.24.01.2011 fall in the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby taxable @12.5%.
3. For reasons as discussed in the body of the order, the prayer for prospective effect is rejected.

  
(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,  
MAHARASHTRA STATE, MUMBAI