

Read - Application dt.13.02.2012 by M/s. DFM Foods Limited holder of TIN 27710827404V.
Heard - Shri Satish Bhanushali [Consultant], Shri Dharmesh Panchal [Consultant] and Shri Rajeev Bhambri [Chief Financial Officer].

PROCEEDINGS

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

No. DDQ 11/2012/Adm-6/3/B- 1

Mumbai, Date: 16/10/2014

An application is received from M/s. DFM Foods Ltd, having address New Haven Building, 1st floor, 49-H Parsi Panchayat Road, Andheri (E), Mumbai-400069 requesting determination of the rate of tax on 'Crax Corn Rings' (in different flavours) sold under the Tax Invoice No.1101044 dt.22.03.2012.

02. FACTS & CONTENTION

The application states thus -

1. "The applicant is engaged in the business of manufacturing, selling and marketing of packaged snack foods and has been a leader in the space for over 25 years. DFM Foods is a public company listed on the Bombay Stock Exchange (BSE).
2. The Applicant pioneered the entry of packaged snacks in the Indian market with the introduction of its Crax Corn Rings Product. Today with sales spanning all of North and parts of Central India, Crax and Natkhat brands are amongst the most popular in the Industry.
3. The applicant has recently started the trading operations of its product called 'Crax Corn Ring' in the State of Maharashtra through its warehouse located at Godown No.4, Building no.A-2, Nx, Arihant Commercial Complex, Bhagawan Sheth Estate, Purna Village, Bhiwandi, Thane bhiwandi, Mumbai. The Applicants are registered under the Maharashtra Value Added Tax Act, 2002 ('MVAT Act) holding Registration No.27710827404.
4. 'Crax Corn Ring' is a non fried, crunchy snack made up of corn meal, edible vegetable oil, spices, condiments, sugar, acidifying agents and Starch. Further, the manufacturing process of making 'Crax Corn Ring' includes blending, extrusion, drying, seasoning and packaging of the products by the Applicant.
5. Schedule C of the MVAT Act specifies the list of goods which are taxable at 5%. Entry 94(b) of this schedule reads as 'Varieties of farsan as may be notified from time to time by the State Government in the Official Gazette, except when served for consumption.'
6. Further, the Government of Maharashtra has specified certain varieties of farsan as per the above entry vide Notification No. VAT-1505/CR-165/Taxation-1, dated 1 June 2005 ('the Notification').
7. From the perusal of the aforesaid entry, it can be seen that the various varieties of farsan is chargeable to VAT at 5%.
8. In the instant case, the Applicant believes that its product 'Crax Corn Ring' is a snack of similar nature and qualify to be classified under Entry 94(b) of Schedule C of the MVAT Act and eligible for VAT rate of 5%.
9. Issue for clarification:- The Applicant seeks to clarify whether Crax Corn Ring and other similar products can get covered under Entry 94(b) of Schedule C of the MVAT Act which is chargeable to MVAT Act at 5% ?

Justification for MVAT Act at 5%

- In the present case, Crax Corn Ring is a crunchy snack having salty and namkeen taste primarily made from corn meal.
- According to the Applicant, such products could be classified as farsan items and chargeable to VAT at 5% due to the following reasons:
 - Entry 94(b) of Schedule C to the MVAT Act reads as, 'Varieties of farsan as may be notified from time to time by the State Government in the Official

Gazette, except when served for consumption'.

Thus the entry deals with the varieties of farsan as notified by the Government of Maharashtra from time to time. Further, the goods listed under the Notification to the said Entry relate to specified snacks or namkeen items.

The product Crax Corn Rings is a snack which can be termed as farsan in common parlance which is of similar colour and type to the products mentioned in the said Notification.

Even though the product Crax Corn Ring is not specifically mentioned in the Notification to Entry 94(b) of Schedule C of the MVAT Act, due to the expression 'Varieties of farsan' used in Entry 94(b) the legislative intent appears to include products which relate to namkeen or snack items of various varieties which should be taxable at concessional rate of 5%.

The product Crax Corn Ring being a snack, farsan or namkeen having characteristics of similar nature as mentioned in Entry 94(b) of Schedule of the MVAT Act, the same should also be chargeable to MVAT at 5%.

- *However, the Applicant has observed that different trade practices are followed in the market for classification of similar products whereby leading to confusion as to the correct applicable VAT rate for such products.*
- *Further, in several States the same product has been classified as Namkeen item which is chargeable to tax at 5%.*
- *Considering the aforesaid, the applicant has by way of abundant caution collected and paid MVAT at 12.5% on a conservative basis, though it continues to believe that the product Crax Corn Rings is a snack item similar in nature of the items mentioned in the Notification issued under Entry 94(b) of Schedule C of the MVAT Act and chargeable to tax at 5%.*
- *Thus, the Applicant seeks clarification on the applicable rate of MVAT that would be applicable to Crax Corn Rings and other similar products for sale within Maharashtra. "*

By letter dt.13.03.2012, the applicant has furnished information about the manufacturing process and the ingredients used -

Manufacturing process

- Blending: The raw materials being used are fed into the blender and it is thoroughly blended there.*
- Extrusion: Through the feeding hopper the mixture is fed into the extruder-cooker, which runs with a high-speed screw rotating inside a barrel. Here, the mixture is firstly mixed with controlled quantity of water about 20%, through a doser at one end and is subjected to heat and pressure. The thermo regulation system applied to the independent zones of the barrel allows a perfect and prompt control of the processing's. The dough gets cooked while travelling from one end to another and it is pressed out through a die of required shape. Because of the restriction of the die, the dough expands. It is then cut to the required length with the help of the cutter blade assembly at the end of the extruder.*
- Drying: Through a pneumatic conveyor the expanded product is fed into drying oven where the moisture content is reduced from 8-9% to 1% in a span of 2 minutes.*
- Seasoning application: The product is then discharged in the flavouring tumbler where alongwith the oil the seasonings spicy / flavoured powders are sprinkled with the help of a pump.*
- Packaging: After this the product is packed in flexible pouches and then packed in corrugated box.*

Key Ingredients

- (1) Corn MEAL
- (2) HVO
- (3) Flavouring powder

03. HEARING

The case was kept for hearing on dt.17.09.2014 when Shri Satish Bhanushali, (Consultant), Shri Dharmesh Panchal, (Consultant) and Shri Rajeev Bhambri, (Chief Financial Officer) attended the hearing. During hearing, a written submission was given which reiterates the contention as made in the application. It was submitted thus :

- The product for determination is 'corn rings'. The ingredients of the product are corn meal, edible vegetable oil, spices, condiments, sugar, acidifying agents and starch.
- It is contended that the entire industry in Maharashtra is charging tax @ 5% on these products. The products of the rival competitors are exactly the same in terms of ingredients, manufacturing process and taste in general.
- The applicant started operation in Maharashtra in March 2012 and is charging tax @ 12.5%.
- It is contended that the product is covered by the schedule entry C-94(b) which reads - "*Varieties of farsan as may be notified from time to time by the State Government in the Official Gazette*". Therefore, it was brought to their notice and even the applicant was aware that the impugned product is not notified for the purpose of the aforesaid entry. However, it is contended that the product falls in the said entry for reasons thus:
 - a. The product is a farsan. The industry has been treating it as a farsan under this notification for a considerable period of time. Similar notification for notified Farsan was there even under the Bombay Sales Tax Act. As a practice, the industry has been paying VAT at the lower rate.
 - b. It is an established principle of law that where a classification has been accepted by the Revenue as a practice but though not strictly covered in the wordings of the entry, such classification is binding on the Revenue. The applicant would furnish a judicial precedent in support of the same.

Accordingly by letter dt.18.09.2014, it was informed that the applicant is relying on the decision in Merind Ltd. vs. State of Maharashtra (136 STC 462 BOM).

04. OBSERVATIONS

I have gone through the facts and the submission. The product is 'Crax Corn Ring' sold in different flavours such as Crax Corn Ring Mania, Crax Corn Ring Tangy Tomato, Crax Corn Rings Masala Mania and Crax Corn Rings Pudina Punch. The claim laid is in respect of the entry 94(b) as appearing thus under Schedule C of the MVAT Act,2002 :

"Varieties of farsan as may be notified from time to time by the State Government in the Official Gazette, except when served for consumption"

The issue to be decided is - *whether the Crax Corn Ring is an item of 'Farsan' as notified for the purposes of the schedule entry C-94(b) of the MVAT Act,2002*. A perusal of the entry reveals that the entry is for varieties of farsan. However, not all items known or referred to as 'farsan' are covered by the aforesaid entry. The entry covers only those varieties of farsan as have been notified for the purposes of the said entry. Therefore, the basis for coverage under this entry would be if the impugned item is found specified in the notification issued for the purposes of the said entry. I would, therefore, have to look at the notification for the purposes of this entry. The items were notified by the notification No.VAT-1505/CR-165/Taxation-1, dated the 1st June 2005. To this notification, amendments were carried out by notification No.VAT 1510/C.R. 52 (C)/Taxation-1, dated the 12th April 2010 and No.VAT 1511/C.R.54(3)/Taxation-1, dated the 27th April 2011. The notification dt.01.06.2005 reads thus :

In exercise of the powers conferred by clause (b) of entry 94 of Schedule C appended to the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005), the Government of Maharashtra hereby specifies the varieties of farsan listed below whether raw or ready to serve, except when served for consumption in any restaurant, including any eating house,
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hotel, refreshment room or boarding establishment or any part thereof or in any club or by a caterer, to be the varieties of farsan for the purposes of the said entry, namely:-

| Serial No. | Varieties of Farsan |
|------------|---|
| 1 | Suki Bhel, Bhel Puri |
| 2 | Bhusa |
| 3 | Khaman-dhokla |
| 4 | Muthias |
| 5 | Patara |
| 6 | Bakarvadi |
| 7 | Vadas of all kinds |
| 8 | Shev |
| 9 | Gathia |
| 10 | Papadi |
| 11 | Phapada |
| 12 | Kadboli |
| 13 | Khari Bundi |
| 14 | Dalmoth |
| 15 | Fried Gram Dal |
| 16 | Fried Moogdal |
| 17 | All kinds of Bhajias |
| 18 | Samosa, Kachori, Patties and Ghughras |
| 19 | Salted or Special Chakli |
| 20 | Salted or Special Kurmura or Murmura |
| 21 | Gold finger |
| 22 | Pani puri |
| 23 | Sabudana poha |
| 24 | Khakara |
| 25 | Chivda including that made of potato (and sabudana)* [*-added w.e.f 1.5.2010 by notification dt.12.04.2010] |
| 26 | Potato wafers and Sali |
| 27 | Banana Wafers and Sali |
| 28 | Vada Pav --- deleted w.e.f. 1 st May 2011 by notification 27 th April 2011 |
| 29 | Khandvi* [*- added w.e.f 1-5-2010 by notification dt.12.04.2010] |
| 30 | Channa chur* [*- added w.e.f 1-5-2010 by notification dt.12.04.2010] |

As can be seen, the impugned product does not find a mention in the above list of items notified as 'farsan' for the purposes of the schedule entry C-94(b) of the MVAT Act,2002. It can also be seen that each of the notified items do not represent any genus or class or species. The notified items represent individual products having a distinct and known existence. Therefore, no case could be made for coverage of the impugned products under any of the notified items. The applicant is well aware of the same and hence, I find that no claim for coverage under any particular item notified in the above list is advanced. In fact, the applicant himself submits thus -

- Even though the product Crax Corn Ring is not specifically mentioned in the Notification to Entry 94(b) of Schedule C of the MVAT Act, due to the expression 'Varieties of farsan' used in Entry 94(b).....
- the legislative intent appears to include products which relate to namkeen or snack items of various varieties which should be taxable at concessional rate of 5%.....
- The product Crax Corn Ring being a snack, farsan or namkeen having characteristics of similar nature as mentioned in Entry 94(b) of Schedule of the MVAT Act, the same should also be chargeable to MVAT at 5%.....

When the applicant states that the impugned product is of similar colour and type to the products mentioned in the Notification, it, in simple words, means that the impugned products are not the same as those notified.

The arguments tendered for coverage under the impugned entry are on the lines that the impugned product is an item of 'farsan' and therefore, merits classification under the impugned entry. Howsoever attractive the argument is, it doesn't apply in the present set of circumstances. Further, in the written submission tendered during hearing, the applicant has invited attention to schedule entries as appearing in the different States. I have not reproduced the said chart herein for reasons that a decision about the rate of tax applicable to a product would be governed by the wording of the schedule entry as appearing in the concerned statute. The position as appearing under the statute in some other State would not be determinant of the tax rate applicable to a product. If the entry for the purposes of the Sales Tax statute i.e the MVAT Act,2002 calls for a notification whereby only specified items of 'farsan' fall within the scope of the said entry then it goes without saying that items which though known as 'farsan' would not fall within the scope of the entry if they have not been notified. My observations in the instant case would not revolve around determining whether the impugned product is a 'farsan'. I have only to satisfy myself as to whether the impugned item has been notified for the purposes of the aforesaid entry. The scope of the deliberations having been defined, rather confined, I would limit my observations thereto. As observed earlier, I do not find the impugned product being notified for the purposes of the aforesaid entry. In view thereof, the coverage of the impugned product under the schedule entry C-94(b) does not arise. I also find that there is no other specific entry under which the impugned product could be said to be covered. In view thereof, the impugned product finds placed in the residuary schedule entry E-1 of the MVAT Act,2002. In fact, the applicant is also aware of the fact that the impugned product does not stand covered by the schedule entry C-94(b) and, therefore, is rightly charging tax thereon @12.5%.

I would now deal with the reliance placed by the applicant on the decision in Merind Ltd. vs. State of Maharashtra (cited supra) to put forth the argument that it is an established principle of law that where a classification has been accepted by the Revenue as a practice but though not strictly covered in the wordings of the entry, such classification is binding on the Revenue. The applicant has also contended that the product is a farsan and the industry has been treating it as a farsan under this notification for a considerable period of time and was so classified even under the Bombay Sales Tax Act. In the aforesaid ruling, the Hon. Bombay High Court had pointed that there were decisions in favour of the appellant which were followed in subsequent cases and were, thus, not challenged. It is in view of the facts as pointed that the aforesaid observations were made by the Hon. Bombay High Court. In the present case, there are no prior decisions wherein items as the nature of the present product are held as 'farsan'. Further, even if there were such decisions, the reliance on Merind (cited supra) would not help as the present entry is not for all the 'farsan' items but only for specified 'farsan' and therefore, the item would

fall under the entry only if notified. Thus, the facts in the aforesaid decision and the entry applicable are different. Here, the schedule entry under interpretation has laid down in unequivocal terms that only notified 'farsan' would be covered by the entry. Therefore, when an entry calls for a notification enlisting the items as would be covered by the same and if such notification does not cover an item then, under no circumstances, could a coverage be presumed under that entry. No Court or Tribunal would approve or endorse such a forced presumption neither would it seek to enlarge legislative intention to hold products not covered by a notification as falling therein. Suffice to say that, there is no scope for claiming industry practice if the impugned product has not been notified.

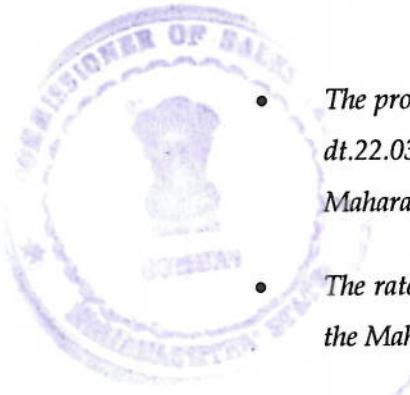
05. In view of the deliberations held hereinabove, it is determined thus -

ORDER

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

No. DDQ 11/2012/Adm-6/3/B- 1

Mumbai, Date: 16/10/2014



- *The product 'Crax Corn Rings' (in different flavours) sold under the Tax Invoice No.1101044 dt.22.03.2012 is not notified as a 'farsan' for the purposes of the schedule entry C-94(b) of the Maharashtra Value Added Tax Act, 2002.*
- *The rate of tax thereon would be 12.5%, being covered by the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002.*

(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI