

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES:.....ASSAM:.....GUWAHATI.

ORDER

Dated Dispur, the 4th September, 2010.

No. CTS-78/2007/352: M/s. Rajnikant & Brothers, Arindam Shopping Plaza, Christian Basti, Guwahati has filed an application under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification as to whether the item "Madhusudan" brand skimmed milk powder containing added sugar and fat is taxable @5% under entry 60 of Second Schedule to the Assam Value Added Tax Act, 2003.

Dr. A.K. Saraf, Senior Advocate assisted by Smti. Medha Lila Gope and Smti. Nitu Hawalia, Advocate appeared on behalf of the petitioner and placed their submission. They also filed written submission in support of the application. They submitted that "The applicant is engaged in the business of sale and supply of skimmed milk powder under the brand name of "Madhusudan" under the Assam Value Added Tax Act, 2003 vide Entry 60 of Schedule II, Part A attached to the Assam Value Added Tax Act, 2003 "Skimmed Milk Powder" is taxable @5%. The said Entry reads as under:- "60. Skimmed Milk Powder and UHT Milk." Since the "Madhusudan" Brand skimmed milk powder with added sugar and fat sold by the applicant is nothing but skimmed milk powder, the same is taxable @5% as per Entry 60 of Schedule II, Part A attached to the Assam Value Added Tax Act, 2003. In the course of the hearing of the aforesaid application it was submitted that the item skimmed Milk Powder of the "Madhusudan" Brand sold by the applicant in common parlance as well as in the commercial parlance is considered to be skimmed milk powder. The aforesaid item is also treated and considered in the trade or the market as well as by the persons who deals with it to be a skimmed milk powder. The principles of interpretation of items in taxing statutes like the Sales Tax Act are well settled by a series of decisions of the Apex Court as well as by the Gauhati High Court. In a taxing statute words of everyday use must be construed not in the scientific or technical sense but as understood in common parlance. If a statute contains language, which is capable of being constructed in a popular sense such a statute should not be construed, according to the strict or technical or technical meaning of the language contained in it but it should be construed in its popular sense, meaning of course by the words "popular sense" that sense which the people conversant with the subject matter with which the statute is dealing would attribute to it. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is so defined. But in the absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted." A number of judgments are also placed in support of their submission namely:- M/s. Mukesh Kumar Aggarwal & Co. Vs. State of Madhya Pradesh (1988) Supp SCC 232; Delhi Cloth and General Mills C. Ltd. Vs. State of Rajasthan (1980) 4 SCC 71; Kali Kumar Sharma Vs. Sales Tax Tribunal, Tripura (1989) 1 GLR 91; Aluminium Cables Ltd. Vs. Union of India (1987) 64 STC 180 and Collector of Customs, Bombay Vs. Swastic Wollens (P) Ltd. (1989) 72 STC 201 SC. They also submitted that "reliance on the provisions of the Food Adulteration Rules and the Milk and Milk Products Order, 1992 for examining the question as to whether the skimmed milk powder sold by the applicant has to be considered as a skimmed milk powder so as to fall within the purview of Entry 60 of the Schedule II attached to the Assam Value Added Tax Act, 2003 is not justified." They further submitted that "The specification of the Skimmed Milk Powder as provided by Bureau of Indian Standards cannot be a guide to determine the classification of the taxable item. The specification as provided by Bureau of Indian Standards will only lead to grant of IS Mark to said item but will not determine the nature of a particular item. Skimmed Milk Powder sold by the applicant is not having the IS specification. Simply because the Skimmed

Milk Powder sold by the applicant does not meet the specification and standards as laid down by Bureau of Indian Standards for grant of the IS Mark, it cannot be concluded that Skimmed Milk Powder of Madhushudan Brand sold by the applicant is not Skimmed Milk Powder..... Further, addition of sugar or fat in the skimmed milk powder will not change the nature of the item. In Commissioner of Sales Tax v. Neera Drinks 125 STC 637 the question before the Allahabad High Court was that Milk Badam which was sweetened milk in which some dry fruits like cashew nut, almond and pista were added and liquid so prepared was put in bottles to which cap was applied, shall cease to be milk and milk product. It was held by the Allahabad High Court that same shall remain milk and milk product. In State of Kerala v. Malabar Regional Co.op. Milk Products Union Limited (2009) 23 VST 424 the Kerala High Court rejected the contention of the Department that by adding of green chilly, ginger etc. to the Buttermilk, the character of the Buttermilk changed. The Court held that mere addition of green chilly, ginger and a pinch of salt would not change the commodity as such. Skimmed milk Powder is nothing but dehydrated form of pasteurized milk. In State of Andhra Pradesh v. Guntur District Milk Producers Co-operative Unit Ltd. (1990) 79 STC 211, the Andhra Pradesh High Court held as under:- "Skimmed Milk Powder is nothing but a dehydrated form of pasteurized milk, and is, therefore, exempt under G.O. Ms. No. 20 dated January 2, 1980 issued under Section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957 which exempts the respondent Co-operative unit from payment of tax on sale of pasteurized milk". In Chunilal Mayachand v. State of Gujarat (1992) 86 STC 105 while examining the scope of entry 'Milk', the Gujarat High Court held as under:- "Nespray" full-cream powdered milk is also "milk" falling under entry 10 of Schedule I to the Gujarat Sales Tax Act, and not "food-stuff or food provision" under entry 6 of Schedule III to the Act. It is also not covered by entry 80 of the Notification dated January 9, 1976, issued under Section 49(2) of the Act." The Andhra Pradesh High Court in Bhushan Gupta v. Commissioner of Commercial Taxes (2007) 6 VST 437 while examining the taxability of Skimmed Milk Powder held as under:- "Notification in G.O. Ms. No. 1091 dated June 10, 1957 issued under section 9 of the Andhra Pradesh General Sales Tax Act, 1957, which grants exemption from the tax payable under the Act in respect of "sales of fresh milk, curd and butter milk sold by dealers exclusively dealing in them and the products realized by utilization of surplus thereof", having been held by the court to apply to skimmed milk powder which has been held to be nothing but milk, and those decisions having attained finality, skimmed milk powder is exempted from the payment of sales tax under the provisions of the Act." The Andhra Pradesh High Court in State of Andhra Pradesh v. Indian Dairy Corporation (2001) 124 STC 395 held that skimmed milk powder is nothing but milk powder and is not liable to be taxed.

Perused the submission. Now, under the Assam Value Added tax Act, 2003, there are two rates of tax for milk powder—skimmed milk powder is taxable @5% and others are taxable @13.5%. So petitioner's submission and quoting of certain judgments that "skimmed milk powder is nothing but milk powder" shall not be relevant in present case as legislative intention is clear from the entries. As there are two separate categories of milk powder to be taxed at different rates, so there must be some identification criteria to place items in two categories. The identification criteria is provided in the provisions of the Prevention of Food Adulteration (PFA) Rules, 1955 and Bureau of Indian Standard which clearly state that skimmed milk powder shall not contain more than 1.5% milk fat and moisture shall not exceed 5%. The fat content in "Madhusudan" brand skimmed milk powder containing added sugar and fat is 10% which more than 1.5% specified for the skimmed milk powder, hence the same cannot be termed as skimmed milk powder.

The petitioner also submitted that even if certain items are added to milk, it still remains milk, therefore even if milk fat and sugar is added to skimmed milk powder, it will still remain skimmed milk powder. The submission of the petitioner is not acceptable in the instant case as the main criteria for determination of skimmed milk powder is the amount of milk fat in

it. As such as and when milk fat is added, then it contains milk fat more than the specified rate for the skimmed milk powder.


As such, the item "Madhusudan" brand milk powder containing added sugar and fat is not skimmed milk powder and, therefore, the same shall come under entry at Sl. No.1 of the Fifth Schedule and shall taxable @13.5%.

Sd/-Sanjay Lohiya,
Commissioner of Taxes, Assam,
Guwahati.

Memo No. CTS-78/2007/352-A
Copy to:-

Dated Dispur, the 7th September, 2010.

1. The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information of the Government.
2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes (All) for information.
3. The Deputy Commissioners of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. M/s. Rajnikant & Brothers, Arindam Shopping Plaza, Christian Basti, Guwahati for information.


(M.H.A. Choudhury),
Addl. Commissioner of Taxes, Assam,
Dispur, Guwahati-6.
