

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

Before Ms. Smaraki Mahapatrara, I.A.S., Commissioner, Sales Tax, West Bengal

In the matter of :

An application filed under section 102 of West Bengal Value Added Tax Act, 2003, read with rule 202 of the West Bengal Value Added Tax Rules, 2005.

- And -

In the matter of :

Case No: 24X/PRO/VAT/2011/172

- And -

In the matter of :

M/s. Britannia Industries Ltd. carrying on business at 15, Taratala Road, Kolkata-700 088.

Present for the applicant: Mr. J.A. Khan, Advocate

Sri Adesh Kumar, Additional Commissioner, Commercial Taxes/Sales Tax,
and Public Relations Officer (PRO) of the Directorate of Commercial Taxes,
was also present to assist in the matter

Date of order: 06.06.2019

This is an application filed by M/s Britannia Industries Ltd., through Sri Manoj Agarwal, Regional Commercial and Finance Manager of the Company (hereinafter referred to as the Applicant), under section 102 of the West Bengal Value Added Tax Act, 2003 (hereinafter referred to as the VAT Act). The Applicant holds VAT Registration/ TIN No. 19200155072 and has raised a question as to whether sale of biscuits by the Applicant to M/s. Harshit Tie-up Private Limited (Authorised Wholesaler) meant for supply through PDS, were covered under entry at serial No. 20A of Schedule A of the VAT Act, and therefore exempt from levy of tax under section 21 of the Act.

2. This application was first disposed of by the Commissioner, Sales Tax, by an order dated 06.04.2011 holding that the sales made by the applicant were not covered under entry No. 20A of Schedule A of the VAT Act.

3. Thereafter the applicant moved the Hon'ble West Bengal Taxation Tribunal challenging the order passed by the Commissioner in Case No. RN-1324 of 2011 titled M/s Britannia Industries

Ltd. Versus Commissioner of Sales Tax & Anr. The Hon'ble Tribunal, by an order dated 19.09.2013 upheld the order passed by the Commissioner.

4. The Applicant then filed a writ petition challenging the order of the Hon'ble West Bengal Taxation Tribunal before the High Court at Calcutta in Case No. WPTT No. 44 of 2015. The Hon'ble High Court passed an order on 30.06.2015, whereby order passed by the Hon'ble Tribunal was set aside and quashed on the ground that the learned Tribunal while passing the order did not consider the intimation dated 13th April, 2010, the memo dated 20th July, 2010 and the agreement made on 16th June, 2010. The Hon'ble High Court directed the Commissioner to the consider the matter afresh and to pass a reasoned order to be communicated to the parties after considering the said intimation, memo and the agreement and after giving an opportunity of hearing. It was also made clear that the Hon'ble High Court has not gone into the merits of the matter and all points are left open to be dealt with by the Commissioner.

5. It is in the above circumstances that the application filed under section 102 of the VAT Act is taken up for disposal. Mr. J.A. Khan, authorised Advocate was heard and documents produced by him were examined. It may be mentioned here that soon after hearing the records related to the instant case were misplaced during the shifting of office, hence the delay in passing this order.

6. The facts of the case are that the applicant, *ineralia*, is a manufacturer of biscuits. In the year 2010, Food and Supplies Department of the Government of West Bengal had issued an order bearing No. 2527-FS // FS/Sectt/Sup/4M-15/2002 dated 13th April, 2010, informing about the State Government's decision to sell Britannia Biscuits to ration card holders regularly through Public Distribution System (PDS) outlets and the West Bengal Essential Commodities Supply Corporation Ltd. (WBECSCCL) was entrusted to implement the programme. The order also mentioned the purchase prices of MR/SR Distributors, MR/SR Dealers and Ration Card Holders for two particular brands namely, Britannia Marie Biscuits-150 gms and Britannia Tiger Biscuits-53 gms.

7. The applicant manufactured biscuits and packed the same earmarking them for sale through PDS and sold to their authorised wholesaler M/s. Harshit Tie-up Pvt. Ltd. The wholesaler sold these biscuits to MR/SR Distributors (said to be modified rationing area/ statutory rationing area distributors) who again sold them to MR/SR Dealers from where biscuits were finally sold to the ration card holders. The chain of production and sale of biscuits is thus as follows: M/s

Britannia Industries Ltd. > M/s. Harshit Tie-up Pvt. Ltd. > MR/SR Distributors > MR/SR Dealers > Ration Card Holders.

8. As per direction of the Hon'ble Calcutta High Court the intimation dated 13th April, 2010, the memo dated 20th July, 2010 and the agreement made on 16th June, 2010 are examined in details and considered; along with other available records and submissions made by the authorised Advocate of the Applicant.

9. The Joint Secretary to Government of West Bengal, Food & Supplies Department, under letter/memo No. 2527-FS dated the 13th April, 2010, informed the Managing Director, W.B.E.C.S.C. Limited, Kolkata-700087, as under:

“Sub: Distribution of BRITANNIA Biscuit to
ration card holders through PDS outlets”

Sir,

In reference to the above I am directed by order of the Governor to say that the Programme of selling Britannia Biscuit to be made available by M/s Britannia Industries Ltd. among the Ration Card holders regularly, have been entrusted to the W.B.E.C.S.C. Ltd. I am further directed to add that the district-wise break-up figures for such distribution would be supplied by the D.D.P. & S and D.R. respectively. The supplier is also directed to make Door-Step-Delivery of the said biscuit to the MR Distributors/A.Ws/FPS in Kolkata and Howrah. The details of the price of the biscuit at different stages of such selling are given below:-

1	2	3	4
Product Name	MR/SR Distributor Purchase Price	MR/SR Dealer Purchase price	PDS Price
Britannia Marie Biscuit 150 gms	Rs.8.02/-	8.34/-	9.00/-
Britannia Tiger Biscuits 53 gms	2.45/-	2.55/-	2.75/-

Price of Biscuit for FPS at earstwhile SR areas of Kolkata and Howrah would be as per serial No. 3 and the same will be delivered from the lake Godown of WBECSCLtd.

The suppliers are to pay Administrative Charges towards this job in the WBECSCLtd. @ 0.75% of the total cost released from the MR Distributors. This order will remain valid until further order”

10. Under memo. No. ECSC/028/10/4446 dated 20.07.2010, OSD, WBECSC Ltd wrote to all the DCF&S/J.D.R. as under:

“Sub: Distribution of Britannia Biscuits to ration Card holders through PDS outlets

Sir,

Government in the Food & Supplies Department has decided to deliver Britannia Biscuits every month through WBECSC Limited to all the district in West Bengal vide G.O. No. 2257-FS/SECTT/SUP/4M-15/2002 dated 13.04.2010. All the District Controllers/J.D.R.S. are requested to kindly pass indents in favour of M.R./S.R. Distributors and to kindly send distributor wise monthly allocation to the WBECSC Limited through Fax:033-2252-0590. Indents may kindly be passed with a minimum quantity of 100 Cartons each in multiple of 100 Cartons additionally and as per population in favour of M.R./S.R. Distributor well in advance, so that, uninterrupted supply be continued for this month and thereafter. Government has also decided to distribute Britannia Biscuits 4 Packets of each Biscuits per family per month. Payment to the Product will be made by the M.R./S.R. Distributor before doorstep delivery by Demand Draft/Cheque of State Bank of India (with core banking facility), directly to Britannia Co.’s authorized wholesaler Harshit Tie-up Pvt. Ltd.. Phone No. 033-2458/2241-1436/ 40081716/40081604, Fax: 033-2219-4620.

All District Controllers/JDRS are requested to kindly send distributor wise monthly allocation at the earliest, so that, delivery of Britannia Biscuits with the following price structure may be started with immediate effect.

Product 1	MR/SR Distributor’s Purchase Price 2	MR/SR Dealer’s Purchase price 3	Ration Card Holder’s Purchase price in PDS 4
Britannia Marie Biscuits 150 gms Packx30Pkt per carton	Rs.8.02	8.34	9.00
Britannia Tiger Biscuits 53 gms Packx216 Pkt per carton	2.45	2.55	2.75

11. The agreement dated 16th June, 2010, between M/s Britannia Industries Ltd. (BIL) and M/s Harshit Tie-up Pvt. Ltd. (Authorised Wholesaler or AW) in connection with the sale of BIL’s

bakery products by AW through Public Distribution System (PDS) in the State of West Bengal is also examined thoroughly.

The agreement was entered into on Principal to Principal basis, in other words AW did not act as agent, factor or representative of BIL. The agreement was effective from the 1st day of April, 2010 up to 31st day of March, 2016 and required AW to collect monthly programmes from the State Government/W.B.E.C.S.C. Ltd. and inform BIL in advance for uninterrupted supply of BIL's bakery products, The AW was at liberty to sell the said products or any of them at prices lower than those recommended by BIL. Further, the AW was liable to deliver the goods/biscuits to the M.R. Distributors/S.R. Distributors according to their allocation.

12. The only issue to be determined here is whether sales of goods, namely biscuits, by M/s Britannia Industries Ltd. to M/s Harshit Tie-up Pvt. Ltd. (AW) were covered under entry at serial No. 20A of Schedule A of the VAT Act, and therefore exempt from levy of tax under section 21 of the Act.

13. Provisions of section 21 of VAT Act and entry at serial No. 20A of Schedule A appended thereto are as under:

Section 21 of the VAT Act titled 'Tax-free sale of goods' is as under:

"No tax shall be payable under this Act on sale of goods specified in column (2) of Schedule A, subject to the conditions, if any set out in the corresponding entry in column (3) thereof."

Entry enumerated at serial number 20A of Schedule A reads as under:

Serial No.	Description of goods	Conditions and exceptions
(1)	(2)	(3)
20A.	<i>Goods, except kerosene oil, sold through Public Distribution System (PDS)</i>	

To put it simply, sale of any taxable goods, except kerosene oil, sold through Public Distribution System is exempted from payment of tax under the VAT Act.

14. The Public Distribution System has not been defined under the VAT Act, however, under the Public Distribution System (Control) Order 2001, the Central Government defined it under clause 2(1) as under:

"(1) 'Public Distribution System' means the system for distribution of essential commodities to the ration card holders through the fair price shops, such as rice, wheat,

sugar, edible oils, kerosene and such other commodities as are notified by the Central Government under clause (a) of section 2 of the Act;”

[the Act here means the Essential Commodities Act, 1955 (10 of 1955)]

Further, the Public Distribution System has been defined under the West Bengal Public Distribution System (Maintenance & Control) Order, 2013, under clause 2(v) as under:

“(v) Public Distribution System” means a system for distribution of public distribution commodities to the holders of ration documents through the fair price shops ;

15. The entire Public Distribution System runs through elaborate network of Distributors and Fair Price Shops who are issued licences by the licensing authorities for this purpose, and it can not be stretched to the point of origin of goods outside the ambit of the above Control Orders of the Central Government or State Government or both.

16. The applicant referred to the judgment of the Apex Court in the matter of Indian Oil Corporation -vs- Commissioner of Central Excise, Vadodra, reported in [2010] 5GSTR226(SC) where clearing of kerosene ordinarily used as an illuminant was allowed concessional rate of excise duty under a specific Notification under the Central Excise Tariff Act. The judgement did not lay down any principle of extending PDS to the stage of manufacturer. The citation of the said judgment in fact does not help the Applicant in any way as the Central Excise Tariff Act, 1985 and West Bengal Value Added Tax Act, 20013 are two different types of legislations. In Central Excise, which is a legislation of the Parliament, the duty is levied on production of goods and collected at the time of clearance of goods, thus exemption or concessional rate of duty, if any, is to be allowed at the time of such clearance only as rest of the chain of supply of that particular goods goes out of the ambit of Central Excise. The Value Added Tax on the contrary is a multiple point of tax levied and collected throughout the chain of production, distribution and supply of goods, thus giving scope to the State Legislature to levy tax or exempt any of the stages of sale of goods,

17. There is nothing on record to suggest that M/s Britannia India Ltd. holds a licence under either the Public Distribution System (Control) Order 2001, of the Central Government or West Bengal Public Distribution System (Maintenance & Control) Order, 2013 of the State Government to make it a part of the Public Distribution System. Thus sales of biscuits by M/s Britannia Industries Ltd. to M/s Harshit Tie-up Pvt. Ltd. (AW) under a Principal to Principal agreement can not be construed as biscuits sold through Public Distribution System (PDS).

Notwithstanding that wrappers of biscuits may have a marking that goods are meant for sale through PDS but that does not qualify the sale of biscuits by M/s Britannia Industries Ltd., *per se*, as biscuits sold through PDS.

18. Further, the exemption from tax on sale of goods sold through PDS under section 21 of the VAT Act, read with entry at serial No. 21 of Schedule A appended to the Act, is a piece of State legislation and thus it can not be over ridden either by Government order issued in its executive capacity or any agreement entered into by two private parties. And it is pertinent to mention here that the expression used in the said entry is - 'sold through PDS' and not 'sold for PDS' or 'meant for PDS'.

In fact there is nothing in- (a) the order issued by Food and Supplies Department of the Government of West Bengal bearing No. 2527-FS // FS/Sectt/Sup/4M-15/2002 dated 13th April, 2010; (b) memo. No. ECSC/028/10/4446 dated 20.07.2010 of the OSD, WBECSC Ltd., sent to all the DCF&S/J.D.R.; or (c) the agreement dated 16th June, 2010, between M/s Britannia Industries Ltd. (BIL) and M/s Harshit Tie-up Pvt. Ltd. (AW), which circumvents the taxability of biscuits sold by M/s Britannia Industries Ltd. (BIL) to M/s Harshit Tie-up Pvt. Ltd. (AW).

19. In view of the above, sales of biscuits by M/s Britannia Industries Ltd. to M/s Harshit Tie-up Pvt. Ltd. (AW) do not fall under the ambit of entry at serial No. 20A of Schedule A of the West Bengal Value Added Tax Act, 2003, and hence are not exempt from levy of tax under section 21 of the Act.

Application filed under section 102 in the instant case stands disposed of as above.

Send a copy of this order to the applicant for information.

Sd/- 06.06/2019
(Smaraki Mahapatra)
Commissioner,
Sales Tax, West Bengal