

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

Before Sri Binod Kumar, 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/15/270

- And -

In the matter of :

M/s Dabur India Ltd., carrying on business under the same trade name at Oxford Building, 1st Floor, 22, Prince Anwar Shah Road, Kolkata-700033

Present for the applicant: Sri Tapan Bardhan, Zonal Finance Manager of the applicant, Sri Kumarjit Das, Advocate and Ms. Sweta Mukherjee, 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: 06.01.2016

This is an application filed by M/s Dabur India Ltd., through Sri Tapan Bardhan, Zonal Finance Manager, hereinafter referred to as 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. 19200068063 and has raised a question for determination of rate of tax applicable to the sale of Corn Flour which is said to be a processed flour extracted from corns.

The applicant has duly affirmed that the dispute has not arisen out of any order passed by any authority and that he has not filed any application before any Court, Tribunal, Board or any authority under the VAT Act, praying for determination of a dispute of similar nature referred to in this application.

Sri Tapan Bardhan, authorised representative and employee of the applicant Company, submitted that Corn Flour marketed by them is made from maize and furnished document explaining manufacturing process which is as under:

Manufacturing Process-

1. Take maize starch from store & before repacking the maize starch it is important to get Test Report from Q.A. Ensure that Corn Flour Powder must be in the free flowing state and their moisture content should be within the limits (as per specification). If there is a soggy appearance, then the material should be sent back to Quality Assurance (QA) department to check for the moisture content.
2. After getting Q.A. report/ approval, weigh the required amount of Maize starch (the weighing equipment should be calibrated and tag should be present showing the calibration date and next due date of calibration)
3. Online quality parameters (Moisture, Ash content, Starch, pH, Sieve analysis, Alcoholic acidity) should be checked by quality chemist
4. After weighing pack it in HDPE polyethylene or as per requirement but there should be a secondary packaging, it should be sealed immediately. After weighing and sealing do proper batch coding as per batch coding procedure.

Sri Kumarjit Das, Advocate, submitted that 'Flour' is enumerated under serial No. 27 of Schedule A appended to the VAT Act and Corn Flour should be treated as tax-free goods. As an alternative pleading Sri Das also argued that Corn Flour is manufactured from maize which is the fruit of maize plant as such maize flour or corn flour can also be considered as processed fruit under entry at serial No. 58B of Part I of Schedule C.

Ms. Sweta Mukherjee, Advocate, argued that the Corn Flour is manufactured simply by grinding maize and no other additives or preservatives are added. She furnished copy of a label used by the applicant for marketing packets of Corn Flour showing a single ingredient namely, 'Edible Corn Starch'. She also produced copy of a sale bill to show that applicant's competitors are charging tax @ 5 %.

Sri Adesh Kumar, PRO, pointed out that Maize falls under coarse grains enumerated under serial No. 8 of Schedule A and that there a specific entry for Maize Starch at serial No. 46A under Part-I of Schedule C of the VAT Act.

The matter is examined and submissions made by the authorised representatives were heard and the written statement and literature submitted by them were perused.

Following entries from Schedules appended to the VAT Act were cited in the course of hearing of the matter.-

- (i) Serial No. 8 of Schedule A- “Coarse grains other than paddy, rice and wheat.”
- (ii) Serial No. 27 of Schedule A- “Paddy, rice, wheat, pulses, flour, *atta*, *maida*, *suji*, *besan* and *sattu*.”
- (iii) Serial No. 46A of Schedule C- “Maize starch, glucose, maize gluten, maize germ and oil.”
- (iv) Serial No. 58B of Schedule C- “Processed and preserved vegetables and fruits, other than dry fruits, but including fruit jams, jelly, sauce, pickle, fruit squash, fruit paste, fruit drink and fruit juice, whether in a sealed container or not, and wet dates, but excluding those not containing any fruit or vegetable extract.”

It is evident from the above mentioned entries that the Legislature intended to treat Maize, which is a coarse grain, differently from rice or wheat, as such corn flour or maize flour, which is also known as maize starch, does not come under the ambit of entry at serial No. 27 of Schedule A of the VAT Act. Further, maize grain, from which corn flour is manufactured, is not considered as fruit in common parlance or at business place.

As per information available in public domain on Wikipedia, corn starch, corn flour or maize starch is the starch derived from the corn (maize) grain. The starch is obtained from the endosperm of the corn kernel. Corn starch is a popular food ingredient used in thickening sauces or soups, and is used in making corn syrup and other sugars.

It is well established that if a statute contains both a general provision as well as specific provision, the latter must prevail. The principle finds its origins in the Latin maxim of *generalia specialibus non derogant*, that is, general law yields to special law should they operate in the same field on same subject.

From the manufacturing process of Corn Flour given by the applicant as well as information given on packaging of goods in question it is clear that Corn Flour dealt in by the applicant is nothing but maize starch.

In view of the foregoing discussion, sale of 'Corn Flour' made by grinding maize is held taxable at the rate of 5 % under section 16(2)(b)(ii), read with entry at serial No. 46A of Part I of Schedule C, of the VAT Act.

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

Sd/- 06/1/16
(Binod Kumar)
Commissioner,
Sales Tax, West Bengal