

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

Before Ms. Smaraki Mahapatra, 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/15/274

- And -

In the matter of :

Sri Rohitashwa Jalan, Proprietor, carrying on business under the trade name of M/s Jalan Trading Co. at 4, Synagogue Street, Kolkata-700001

Present for the applicant: Sri Pawan Kumar Jalan, Authorised Representative

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: 26.12.2016

This is an application filed by Sri Rohitashwa Jalan, Proprietor, carrying on business under the trade name of M/s Jalan Trading Co., 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, who holds VAT Registration No./ TIN 19240436068, has raised a question for determination of rate of tax applicable to the sale of 'Vegetable Fat Spread' being sold by him under the brand name of "Merrigold".

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 Pawan Kumar Jalan, authorised representative and father of the applicant, submits that Vegetable Fat Spread being sold by them is nothing but modified and preserved vegetable oil. It is made from following constituents:

- (a) Edible Vegetable Oil;
- (b) Water;
- (c) Common Salt;
- (d) Skimmed Milk Powder and
- (e) Emulsifiers, Stabilizers, Preservatives, Starch and Flavours.

Sri Jalan submitted that vegetable fat spread contains very low saturated fat and has no cholesterol and zero trans fat. It can also be used for baking, shallow frying and general cooking. He further added that similar product, under the brand name of ‘Nutralite’, is being sold at the rate of 5 % in West Bengal.

Sri Adesh Kumar, PRO, stated that entries at serial No. 26, 87 and 88 of Part I of Schedule C deal with edible oils and vegetable oils and are follows:

Serial No.	Description of goods	Conditions and Exceptions
(1)	(2)	(3)
26.	Edible oils other than coconut oil.	
87.	Vanaspati (Hydrogenated Vegetable Oil), also known as vegetable ghee manufactured or made in India, and sold under various trade names and descriptions, such as Dalda, Kusum, etc.	
88.	Vegetable oil including gingili oil and bran oil but excluding coconut oil.	

He also cited an order dated 14.03.2013 passed earlier by the Commissioner, Sales Tax, West Bengal, under section 102 of the West Bengal Value Added Tax Act, 2003, in the matter of Sri Rup Narayan Agarwal, Proprietor of M/s Pawan Sales, in Case No. 24X/PRO/VAT/12/220 whereby applying the ratio of judgment of the Supreme Court of India in the matter of Aluva Sugar Agency Vs. State of Kerala [(2011) 45 VST 1 (SC)] ‘Nutralite’ was held to be vegetable oil.

The matter is examined and arguments put forth by the applicant’s representative are considered in the light of edible oil enumerated under Part I of Schedule C of the VAT Act.

The Hon'ble Supreme Court of India in the matter of Aluva Sugar Agency Vs. State of Kerala (Civil Appeal No. 7731 of 2011) [(2011) 45 VST 1 (SC)] was seized of the matter whether margarine can be considered as an edible oil. The Apex Court held margarine to be edible oil and observed-

“We clearly understand that edible oil is that oil which can be used for human consumption. It is not necessary that all edible things should be consumed in the form in which they are available. There are number of ingredients used in cooking for preparation of food articles which we do not consume in the same form but they are used in preparation of food articles which are consumed.

So as to simplify the conclusion, we may say that normally anything which is used for preparation of a food article is edible because ultimately it is being consumed by human beings. Though one may not consume margarine directly or may not use for normal cooking, the fact is that margarine is used for preparing bakery items which are consumed by human beings and, therefore, margarine is also edible. Having around 80% fat, and being in the nature of oil, in our opinion, it should be considered as edible oil.”

The item ‘Vegetable Fat Spread’ sold by the applicant under the brand name of “Merrigold” is similar to ‘Naturalite’ in nature and the ratio of the judgment of the Apex Court, discussed above, applies squarely in the instant case.

It is therefore, determined that sale of ‘Vegetable Fat Spread’ sold under the brand name of “Merrigold” would attract tax at the rate of 5 % under section 16(2)(b)(ii) of the West Bengal Value Added Tax Act, 2003, vide entry at serial No. 26 of Part I of Schedule C.

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/- 26.12.2016
(Smaraki Mahapatra)
Commissioner,
Sales Tax, West Bengal