

**IN THE OFFICE OF COMMISSIONER  
DEPARTMENT OF TRADE AND TAXES  
GOVERNMENT OF N.C.T. OF DELHI  
VYAPAR BHAWAN, NEW DELHI**

No.369/CDVAT/2014/329

Dated: 26.11.2014

M/s. Hindustan Coca Cola Beverages Pvt. Ltd.,  
Plot No-2 Shambhudayal Bagh,  
Kalkaji Road , Near Modi Flour Mill,  
New Delhi-110020.

**ORDER**

Present for the Applicant : Sh. Yogesh Bansal, Representative of  
the Company  
Present for the Department : Sh. M.K.Aggarwal, Departmental  
Representative

EDP-1005  
29/11/14

The above named applicant filed an application on 06/08/2014 under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and the question put up for determination under the aforesaid provision of law is as under: -

***"What is the rate of tax that is payable on a sale of BIB and inter-alia what is the appropriate classification of Bag-in-Box(BIB) syrup under the schedules to the act?"***

2. The application has been filed in the prescribed format DVAT-42 and the requisite fee of Rs.1000/- paid through online Reference No.420231760720714 dated 25.07.2014 of State Bank of India.
3. Sh. Yogesh Bansal, Representative of the Company, appeared and reiterated the facts and grounds of the case and requested to determine the rate of tax payable on sale of BIB syrup.



4. The brief facts of the case, as explained by the applicant are as under:-
- i) M/s. Hindustan Coca Cola Beverages Pvt. Ltd., is a registered dealer having TIN 07900208527.
  - ii) The dealer is engaged in the business of sale of aerated water, fruit juice based drink and packed drinking water products under various brand like Coca Cola, Thumps up, Sprite, Fanta, Limca, Maaza and Kinley water.
  - iii) The dealer is currently classifying the product Bag-in-Box (BIB) syrup as 'Aerated Drinks' under Entry no.11 of the Fourth Schedule to the Act and accordingly, charging & paying tax at 20 percent and the applicant trusts that the product Bag-in-Bag (BIB) syrup is not classified anywhere hence should be covered under the provision of section 4(1)(e) of the Delhi Value Added Tax Act, 2004 i.e. @ 12.5%.
  - iv) Dealer quoted the definition of 'Aerated' as per the Oxford Dictionary as "(Of a liquid) made effervescent by being charged with carbon dioxide or some other gas". The 'BIB' syrup is a 'Post Mix Beverage Syrup' designed for fountain dispensing soda machines and not a 'Aerated Drink' as it does not contain CO<sub>2</sub> or any other gas. Since BIB is not a 'Aerated Drink' and not classified anywhere, should liable to be taxed at the rate of 12.5% as (Residual Entry in the absence of any specific entry for BIB syrup or Post Mix Beverage Syrup) stipulated under section 4(1)(e) of the Delhi Value Added Tax Act, 2004.

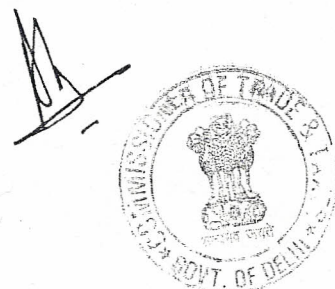




- v) Dealer also mentioned that the 'BIB' syrup which is a 'Post Mix Beverage syrup designed for fountain dispensing soda machines' is classified under chapter 21 'Miscellaneous Edible Preparations' under tariff item no.2106 90 50 as 'Compound preparations for making non-alcoholic beverages' under the law of Central Excise.
- vi) Dealer further submitted that the BIB/Post Beverage Syrup cannot be drink as such like 'Aerated Drinks'. It is in the nature of Syrup. Water and Co2 are required to be added in this syrup to make it drinkable. Hence it is different from Aerated Drinks and cannot be consumed directly by human beings.
- vii) The dealer, vide letter dated 03.09.2014, quoted Schedule C of Maharashtra where VAT Rate on BIB is 12.5% on BIB Syrups and further certified that their product under consideration i.e. BIB syrup does not contain CO<sub>2</sub> or other gases.
- viii) The dealer vide letter dated 19.09.2014, submitted Test Reports issued by Vimta Labs certifying that CO<sub>2</sub> is absent in Coca-Cola, Sprite, Thumsup & Fanta BIB syrups.

With the above averments, the applicant requested to classify BIB Syrup as covered under section 4(1)(e) of the DVAT Act, 2004 and charged to tax @ 12.5%.

5. The DR appearing on behalf of the department stated that Entry 11 of the Fourth schedule of the DVAT Act 2004 reads as "Aerated Drinks". The dealers/stockiest of Hindustan Coca Cola Beverages Private Limited are at present charging 12.5% tax on BIB and its subsequent dealers are also charging 12.5% on the same product, though the subsequent dealers should charge at the same rate as the parent dealer.



6. I have heard both the sides and I am of the considered view that the above syrup is one of the ingredients used in fountain dispensing soda machines. The soda machine has three separate ingredients CO<sub>2</sub>, water and syrup. The final product is prepared after the three are mixed. CO<sub>2</sub> is mixed in the drink at this stage to make it aerated. The syrup as such is not a drink and also do not contain CO<sub>2</sub>. Hence, the syrup is not covered under any entry of the schedules appended to DVAT Act, 2004, and is thus covered under residual entry and charged to VAT @ 12.5%.

7. Held accordingly.

(Sanjeev Khirwar)  
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Programmer (EDP) for uploading this order on web.
5. Assistant Commissioner (Policy)
6. President, Sales Tax Bar Association (Regd.)
7. Guard File

(Sanjeev Khirwar)  
Commissioner, VAT

