

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

No.324/CDVAT/2012/135-140

Dated: 02-05-2013

M/s Devashree Foods Pvt. Ltd.
C-20, Okhla Phase-I,
New Delhi-110020

ORDER

Present for the Applicant : Sh. H.C. Bhatia, Advocate
Present for the Department : Sh. T.C. Sharma, Department
Representative

The above named applicant filed an application on 05/11/2012 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 on "Non-Dairy Whipp Topping" under the Delhi Value Added Tax, 2004?"

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through bank draft No. 814376 dated 02/11/2012.
3. M/s Devashree Foods Pvt. Ltd. is a registered company having its registered office at Mumbai and branches in various states all over India. The applicant is engaged in the business of sale of dairy and non-dairy food products. The Company is also registered in this department under Delhi Value Added Tax Act, 2004.

Further, the non-dairy whipp-topping, manufactured and sold by the applicant is used as a bakery ingredient for dressing/topping, ingredients, garnishing and filling of desserts like cakes, pastries, mouse and also in some beverages like cold coffee etc.

4. Sh. Sh. H.C. Bhatia, Counsel of the Company appeared and reiterated the grounds of the determination application. He referred to the entry no. 4, part-C of Schedule III appended to the U.P. VAT Act, 2008 and corresponding entry of Delhi Value Added Tax Act, 2004 appearing at serial no. 4, part-A (Industrial Inputs) of entry no. 84 of III Schedule, which are exactly similar to each other and reads as under:

“Animal or Vegetable fats boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this chapter.”

He further referred to the judgment passed in the case of M/s Rich Graviss Products Pvt. Ltd. vs. Commissioner, Commercial Taxes, U.P., Lucknow by Commercial Taxes, Tribunal, U.P., Lucknow (Full Bench), wherein, it was decided that the item ‘Rich Whip Topping non-dairy cream’ falls under entry no. 4, Part-C of Schedule II appended to U.P. VAT Act and falls within the purview of ‘preparation of fats and oils’. The relevant extract of the said decision is as follows:

“The report furnished by the experts of H.B.T.I., Kanpur has not been controverted by the department. The experts report goes on to show that the product in question is prepared from fats and oils. The fats and oils used in this preparation are as ingredients of topping cream, which is used for bakery and confectionary industries. There appears nothing on record which may undermine the authenticity of the expert report. The conclusion drawn by the expert panel connects Entry No. 4 (as shown above) in positive terms. The aforesaid discussion establishes that the product in question is the preparation of fats and oils and is fairly governed by Entry no. 4 of Part-C of Schedule II of U.P. VAT Act, 2008 and is taxable at the rate of 4%.”

He further referred to the determination order passed under section 84 of the DVAT Act, 2004 in the case of M/s Behari Lal Darshan Lal Pvt. Ltd. The said determination order was based on the Hon’ble Supreme Court Judgment delivered in the case of Aluva Sugar Agency vs State of Kerala. In the said determination order, it was held that ‘Margarine made of vegetable oils is covered under entry no. 25, 74 and 75 of the schedule III, hence taxable at the rate of 5%’. He contended that the item under consideration i.e. ‘non-dairy whipp topping’ also

contains vegetable oils, so, it should also be taxable @5%. He stated that using the concept of uniformity of tax in various states, the item 'Non-Dairy Whipp Topping' should be covered under entries no. 74, 75, and 84 of the third Schedule of the said Act.

5. The Departmental Representative submitted that the item 'Non-Dairy Whipp Topping' is not covered under entry no. 74 & 75 of the DVAT Act, 2004 and the determination order passed in the case of M/s Behari Lal Darshan Lal Pvt. Ltd. is also distinguished on the ground that the product 'margarine' contains around 80% fat can be treated as edible oil but the product under determination contains only 20-21% vegetable oil.

However, the product under determination does fall in industrial inputs specified at serial no. 4, part-A (industrial inputs) under entry no. 84 of III Schedule, appended to DVAT Act, 2004.

6. I have perused in detail the application filed under Section-84 of the DVAT Act and heard both the parties. After going through the various schedules appended with the DVAT Act and judgment passed in the case of M/s Rich Graviss Products Pvt. Ltd. vs. Commissioner, Commercial Taxes, U.P., Lucknow by Commercial Taxes, Tribunal, U.P., Lucknow (Full Bench), I am of the considered view that that item i.e. 'Non-Dairy Whipp Topping' is preparation of fats and oils and is covered in industrial inputs specified at serial no. 4, part-A (industrial inputs) under entry no. 84 of III Schedule, appended to DVAT Act, 2004. Hence, taxable @5%. Held accordingly.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Value Added Tax Officer (Policy Branch)
5. President, Sales Tax Bar Association (Regd.)
6. Guard File

(Prashant Goyal)
Commissioner, VAT