

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES :::: ASSAM ::::KAR BHAWAN
DISPUR, GUWAHATI.

ORDER
Dated Dispur, the 17th November, 2012.

No. CTS-78/2007/417 : M/s Rajanikanth & Brothers, Guwahati, Christianbasti deals in Madhusudhan Brand Skimmed Milk Powder containing added sugar and fat. The Commissioner of Taxes passed an order dt. 4.9.2010 under Section 105 of the Assam Value Added Tax Act, 2003 declaring that the item "Madhusudhan Brand Milk Powder" containing added sugar and fat was not skimmed milk powder and hence not covered under entry at Sl. No. 60 of Part-A of Second Schedule of the Assam Value Added Tax Act, 2003. It was held that the item in question was covered by the residual entry, hence rate of tax @13.5% was applicable. The petitioner filed writ petition Civil No. 5918/2010 and Hon'ble Court vide its order dt. 17.7.2012 set aside the order dt. 4.9.2010 and remitted the matter to the Commissioner of Taxes for a fresh decision in the matter in accordance with law. Hon'ble Court held that "perusal of the impugned order shows that the Commissioner of Taxes did not go into the common parlance meaning of the expression "skimmed milk". This may require the matter to be re-examined." Therefore, the petitioner has appeared before the Commissioner of Taxes for a hearing.

Shri Nitu Hawelia, Advocate appeared on behalf of the petitioner and filed her submission. She also filed a written submission which is perused. The schedules of the Assam Value Added Tax Act is also examined. In the AVAT Act, 2003, "fresh milk and pasteurized milk excluding UHT milk" is exempted as per entry at Sl. No.16 of the First Schedule and "skimmed milk powder and UHT milk" is taxable @5% as per entry at Sl. No. 60 of Part-A in the Second Schedule. Therefore, it is apparent that legislative intention is to levy tax on skimmed milk powder and UHT milk @5% whereas fresh milk and pasteurized milk are exempted item. Further, milk powder is taxable @ 13.5% as the product is not mentioned in any of the entries at First, Second, Third and Fourth Schedule. The legislature has made three categories for milk and milk powders for levy of tax.

Skimmed milk powder is not defined in the schedule. Therefore, the item has to be understood in common parlance. In common parlance, skimmed milk powder means milk powder that has less fat. The Madhusudhan Brand of skimmed milk powder is marketed as skimmed milk powder but with added fat. It implies that though the name is given as skimmed milk powder but it has fat. Therefore, it cannot be regarded as skimmed milk powder because skimmed milk powder has to contain less fat.

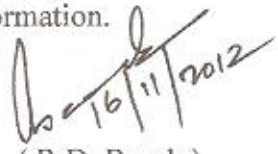
The petitioner also submitted that even certain items are added to milk it will remain milk. Thus if milk fat and sugar is added to skimmed milk powder, it will still remain skimmed milk powder. The submission of the petitioner is not justified as under AVAT Act two separate category of milk powder is taken into account on the basis of their fat amount i.e. milk powder with less fat is kept under 5% category whereas milk powder with fat is kept under 13.5% category. The petitioner's brand of milk powder is marketed as skimmed milk powder with added fat i.e. milk powder with fat. Hence, it is clarified that the item Madhusudhan Brand Milk Powder containing added sugar and fat is not skimmed milk powder and therefore shall come under entry at Sl. No. 1 of Fifth Schedule and shall be taxable @13.5%.

Sd/- Dr. J.B. Ekka ,
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-78/2007/417-A

Dated Dispur, the 17th November, 2012.

- Copy to
- 1 The Principal Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6 for favour of kind information of the Government.
 2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes(All) for information.
 3. The Deputy Commissioner of Taxes (All) for information.
 4. The Assistant Commissioner of Taxes, Superintendent of Taxes(all) for information.
 5. M/s Rajanikanth & Brothers, Guwahati, Christianbasti, for information.


(R.D. Borah),
Joint Commissioner of Taxes, Assam,
Guwahati-6.


16/11/2012