

**BEFORE THE ADVANCE RULING AUTHORITY: ODISHA SALES TAX TRIBUNAL,
CUTTACK**

A.R.A.No.02 of 2012-13

Present Shri G.C.Patnaik, Shri S.K. Paty, & Shri C.Jena,
2nd Judicial Member. 1st Judicial Member. Accounts Member-III.

M/s.Balaji Enterprise,
G.M.College Road,
Sambalpur-768001.

... Applicant.

-Versus-

State of Orissa, represented by the
Commissioner of Sales Tax(O),Cuttack.

... Respondent.

For the Applicant : ... Mr. S.T.Kakad, Advocate.
For the Respondent : ... Mr. R.K. Rout, S.R-I.

Date of hearing: 09.07.2012 *** Date of order: 10.07.2012

ORDER

This order arises out of the application preferred by the applicant M/s. Balaji Enterprise of Sambalpur for an Advance Ruling u/s. 78(1)(i) of the O.V.A.T. Act for determination of the rate of tax of the commodity like Sterilized Low Fat-"CREAM".

2. In the application the applicant submitted before this forum that the applicant is a partnership firm duly registered under the O.V.A.T. Act having TIN number and carrying on business as a wholesaler, stockiest and distributors for commodity like Sterilized Low Fat-"CREAM". The said "CREAM" is being manufactured by Ajanta Dairy of Uttar Pradesh. The applicant contended that the said "CREAM" is exigible to 5% of tax as similar products are taxable as per Serial Nos.103, 111, 37 and 124 of the Part-II of



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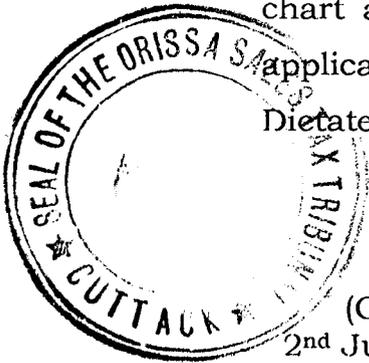
Schedule-B of the O.V.A.T. Rate Chart. The Dictionary meaning of "CREAM" is the oily substance arises on milk and that means the oily part of milk which gathers on the top. Further, it was submitted that the said "CREAM" is a milk product commonly known as "MALAI" which is produced out of the milk like Chhena, Dahi, Khoya/Khoya, Butter, Paneer and Cheese etc. and for which the "CREAM" shall be only exigible to 5% of tax under the O.V.A.T. Act like other milk product. In support of his contention, the counsel of the dealer cited the reported case of R. Atmaram Basudiwala v. State of Gujarat reported in (1992) 86 STC Page 190 (Gujarat) and contended that the said "Mori Basudi" is a milk product as per the Gujarat Entry Rate Chart and likewise the "CREAM" manufactured by the Ajanta Dairy is exigible to 5% of tax.

On the other hand, the Revenue submitted a written argument and contended that the "CREAM" sold by the dealer is known as Sterilized Low Fat-"CREAM" and the said "CREAM" is Dairy product i.e. composite of higher butterfat layer skimmed before homogenization. The commodity in dispute "CREAM" is a milk product but it is not milk. There is no such specific entry under the O.V.A.T. Rate Chart as milk product to accommodate the "CREAM" under the said entry. The Serial Nos.103, 111, 37 and 124 are independently of the specified goods and it does not include the item "CREAM". So, as an unspecified item the said "CREAM" is exigible to 13.5% of tax. The findings of the Hon'ble High Court of Gujarat is distinguishable as Basudi is in their Rate Chart but "CREAM" is not in our O.V.A.T. Rate Chart. So, the Revenue contended that the said item "CREAM" is exigible to 13.5% of tax.

3. By taking note of the rival contentions, it is to be decided by this forum whether the "CREAM" is a scheduled item under the O.V.A.T. Rate Chart exigible to 5% of tax or it is exigible to 13.5% of tax as an unspecified item. The applicant approach this forum to determine the tax of the Sterilized Low Fat-"CREAM" and claimed that as it is a milk product like the entry Nos. 103, 111, 37 and 124 of the Part-II of Schedule-B of the O.V.A.T. Rate Chart, it is only exigible to 5% of tax. Whereas the Revenue contended that even though the "CREAM" is milk product it is an unspecified item as per O.V.A.T. Rate Chart and exigible to 13.5% of tax. The applicant is a wholesaler-cum-Stockiest and Distributors of commodity alongwith the item like "CREAM".

The manufacturing unit of the said item is situated at Agra of Uttar Pradesh. As per the Dictionary meaning "CREAM" means the oily part of the milk which gathered on the top and now coming to the entry by Serial No. 103 the name of the commodities are Skimmed Milk Powder, Khoya/Khoa, Condensed Milk, Flavored Milk and UTH Milk. The entry No.111 speaks about sweetmeats. The entry No.37 and 124 says about Cottage Cheese and Vanaspati and Ghee respectively. All these items are exigible to 5% tax as per the Schedule and the question arises before this forum whether the item called "CREAM" is a scheduled product under the O.V.A.T. Rate Chart. It was the intention of the Legislature while drafting the Act have specifically mentioned the commodities as per the Serial numbers of Rate Chart and they have treated the item like "CREAM" as an unspecified item under the O.V.A.T. Rate Chart. Even though "CREAM" is a milk product as conceded by the Revenue but it has got no specific entry like "CREAM" or milk product in the Schedule of the Rate Chart. So, this forum also arrived at a conclusion that the item called "CREAM" marketed by the applicant is an unspecified item as per the O.V.A.T. Rate chart and is exigible to 13.5% of tax. So, the application preferred by the applicant for an Advance Ruling on this point is disposed of accordingly

Dictated & Corrected by me,



Sd/-
(G.C.Patnaik)
2nd Judicial Member.

Sd/-
(G.C.Patnaik)
2nd Judicial Member.

I Agree,

Sd/-
(S.K.Paty)
1st Judicial Member.

ATTESTED AS TRUE COPY

Computer Stenographer

I Agree,

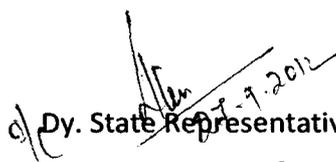
Sd/-
(C.Jena)
Accounts Member-III.

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES;ODISHA;CUTTACK.

Memo No.I(VI)38/12 16515 /CT., Dated. 27-9-12

Copy forwarded to All Sub-ordinate Offices/All officers of Head Office for information and necessary action.

Memo No. 16516 /CT.,


Dy. State Representative
Dated. 27-9-12

Copy forwarded to the A.C.C.T.(I.T.) for favour of information and necessary action.


Dy. State Representative

