

**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/18/310

- And -

In the matter of :

M/s GEE PEE Foods Private Limited, carrying on business under the same trade name at Chakundi, Dankuni, Hooghly-712310

Present for the applicant: Sri Atish Chakraborty, Authorised Representative

Date of order: 26.02.2019

This is an application filed by M/s GEE PEE Foods Private Limited, a Company carrying on business under the same trade name, through Sri Vikram Agarwal, Director, hereinafter referred to as the 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 19396824027, has raised question for determination whether 'Dr. Chatu Rings Tomato, Dr. Chatu Tomato sticks, Pogo Tomato Masala, Pogo Twister Masala, Pogo Chocolate Balls, Pogo Golmal Ring Tomato and Pogo Ring Masala' are snacks and bhujia or not and whether these are exigible to tax under the VAT Act, if yes, then what will be the exact Schedule.

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 Atish Chakraborty, authorised Advocate of the applicant, submitted that the goods in question are potato snacks and are made from potato flour or potato starch mixed with many other ingredients and are puffed into different shapes. Sri Chakraborty argued that these puffs are consumed as snacks and/or bhujia and accordingly these should be put under entry at serial No. 32B (*mentioned wrongly as 33B in written submission*) of Schedule A, or entry at serial No. 23A of Schedule C, appended to the VAT Act. He further argued that puffs are similar to wafer and while discussing the matter of wafer the Hon'ble Supreme Court of India pointed out that where an expression occurring in a statute is capable of a wide as well as narrow meaning, the question whether the wide meaning or the narrower meaning should be given to that expression would depend upon the context and the background and therefore, puffs are to be placed under item number 23A of Part C of the Schedule being similar to fried items which are taxable @ 5 %.

The matter is examined in the light of the statutory provisions and submissions made and arguments put forth by the Applicant.

First let us examine the entries referred to by the Applicant in written submission and during the course of hearing:

Item No. 32B of Schedule A of the VAT Act:

Serial No.	Description of goods.	Conditions and exceptions
32B.	Salted cooked food made wholly or principally of flour, atta, suji or besan, that is to say, singara, Nimki, kachuri, khasta kachuri, luchi, radhaballavi, and dalpuri.	

Item No. 23A of Schedule C of the VAT Act:

Serial No.	Description of goods	Conditions and exceptions
(1)	(2)	(3)
23A.	Chanachur, bhujia, dalmoot, fried potato chips and salted peanuts.	

Entry at serial No. 32B of Schedule A of the VAT Act enumerates salted cooked made wholly or principally of flour, atta, suji or besan and because of the use of the phrase 'that is to say' it is an exhaustive entry restricted to 'singara, Nimki, kachuri, khasta kachuri, luchi, radhaballavi, and dalpuri' only. The items in question, namely, 'Dr. Chatu Rings Tomato, Dr. Chatu Tomato sticks, Pogo Tomato Masala, Pogo Twister Masala, Pogo Chocoltate

Balls, Pogo Golmal Ring Tomato and Pogo Ring Masala' do not qualify to be included under this entry as both, the ingredients used and resultant products are completely different.

The items under entry at serial No. 23A of Schedule C of the VAT Act include 'Chanachur, bhujia, dalmoot, fried potato chips and salted peanuts' which are completely different both in description as well as in common parlance as none of the items in question are understood or dealt with at business place as chanachur, bhujia or potato chips. Traditionally certain kind of pulses or besan are used as principal ingredient of bhujia, whereas items in question, are made from potato flour or potato starch and are neither sold nor identified as bhujia at common market place.

Since 'Dr. Chatu Rings Tomato, Dr. Chatu Tomato sticks, Pogo Tomato Masala, Pogo Twister Masala, Pogo Chocolate Balls, Pogo Golmal Ring Tomato and Pogo Ring Masala' made from potato flour or potato starch are not mentioned either by name or description under Schedules A, B, C or D of the VAT Act, hence these items are held taxable under section 16(2)(ba) of the West Bengal Value Added Tax Act, 2003, at the rate of 14.5 % under Schedule CA, as unspecified items.

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/- 26/02/19
(Smaraki Mahapatra)
Commissioner,
Sales Tax, West Bengal