

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND
ADVANCE RULING**

ACAAR No.11/2013-14
Acts cell-II/28822/2016

Dated:30.12.2016

- Present:**
1. Dr. C. Chandramouli, I.A.S.,
Additional Chief Secretary / Commissioner of Commercial Taxes.
 2. Thiru. A. Sarvar Allam,
Additional Commissioner (CT), (Public Relations)(FAC)
 3. Thiru. K. Mahalingam,
Additional Commissioner (CT), (Revision Petitions)

REVIEW ORDER

- Ref :
1. Proceedings of the Authority for Clarification and Advance Rulings in ACAAR.11/2013-14 (Acts Cell-II/13137/2013) to Tvl. Vijay Homes Foods (P) Limited, Trichy dated 02.12.2013
 2. Orders of the Hon'ble High court of Madras in W.P.Nos.30796 to 30803 of 2016 dated 02.09.2016.
 3. Review application in Form VV received from Tvl. Arokiya Foods, Vellakovil - 638 111 on 20-10-2016.

Tvl. Arokiya Foods, No.81-A Azhagapuri Nagar, Vellakovil - 638 111, Tirupur District (TIN:33293083174), registered dealers in the files of Kangayam Assessment Circle have preferred application under Section 48-A (4) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006), read with Rule 12-A of Tamil Nadu Value Added Tax Rules, 2007 (TNVAT Rules, 2007) for review of clarification already advanced vide proceedings 1st read above.

2. On application by Tvl. Vijay Homes Foods (P) Limited, No.1/181-B, Trichy Thuraiyur Main Road, Peramangalam Village, Musiri Taluk, Trichy District, it was clarified in the proceedings 1st cited as follows:

“Idly Wet Maavu (Batter) இட்லி மாவு , Doasai Wet Maavu (Batter) தோசை மாவு, Vadai Wet Maavu (Batter) வடை மாவு, Addai Wet Maavu (Batter) அடை மாவு, sell in loose condition (without any container / Brand) are taxable at 5% under Entry 51 of Part B of the First Schedule, provided such goods are not branded”

3. Relying on the above clarification, the assessing authority of Tvl. Arokiya Foods issued assessment proceedings for the years from 2009-2010 to 2016-17. The applicant-dealers challenged the above proceedings by filing writ petitions against the above clarification issued in ACAAR.11/2013-14 (Acts Cell-II/13137/2013) dated 02.12.2013, and as per orders of the Hon'ble High court of Madras vide reference 2nd cited, the petitioner has filed this review application. The applicant-dealers have contended that they purchase Rice, Salt, Orid dhall, R.O Water etc., which are exempted from the levy of sales tax and utilized the above ingredients and manufacture Wet idli, Dosai and Aadai Maavu (Batter) and sold them inside the state. The Wet idli, Dosai and Aadai Maavu (Batter), if kept in open air for 24 hours, would decay and perish and become not suitable for human consumption. Thus the applicant-dealers have contended that the goods mentioned under Entry 51 of part-B of First Schedule to the TNVAT are non-perishable, but the Wet idli, Dosai and Aadai Maavu (Batter) which are highly perishable cannot be classified in the above entry.

4. The applicant-dealers sought for personal hearing and accordingly they were heard on 28.11.2016. Thiru. C. Baktha Siromani, Advocate and Counsel of the applicant-dealers appeared for the hearing and reiterated the above contentions.

5.1 This committee considered the above application and the documents filed along with the application carefully and examined the issue with reference to the Schedules and provisions of TNVAT Act, 2006, Rules made thereunder and notifications issued under the Act. The contentions made by the learned Counsel for the applicants at the time of personal hearing were also examined thoroughly.

5.2. Section 48-A(3)(ii) reads as follows:

"The order of the authority shall be binding in respect of the goods in relation to which the clarification or advance ruling was sought"

Therefore, the clarification issued on the rate of tax applicable on certain goods to Tvl. Vijay Homes Foods (P) Limited, is applicable on the same goods dealt by any dealer. If such other dealer has any dispute about the clarification applied to him, he is at liberty to seek appeal remedy provided in the statute. A dealer cannot question the legality of application of the clarification issued to the same product dealt by him issued to some other dealer.

5.3. The main contention of the applicant is that the input goods such as rice, salt, orid dhall, R.O water etc used for the production of batter are exempt from tax and the final product is perishable, the batter should also be eligible for exemption. The above stated input goods undergo a manufacturing process of grinding by which a new commercial commodity emerges. The final product that emerges after the process of grinding is totally different from the input goods in nature, usage and commercial identity. In such cases, as per the law evolved in commodity taxation, the goods have to be treated differently and the rate of tax applicable on raw materials cannot be applied on the newly emerged finished product. Therefore, the contention of the applicant that since the raw materials used for the production of batter are exempt from levy of tax, the batter should also be exempt from levy is not acceptable legally.

5.4. As far as the perishable nature of the goods, Entry 51 of Part B of the First Schedule to TNVAT Act does not restrict the goods only to non-perishable goods. Therefore, the argument of the applicants that perishable goods would not fall under the above Entry is not supported by any legal grounds.

5.5. It was already clarified in ACAAR No.11/2013-14 (Acts Cell-II/13137/2013) dated 02.12.2013 that Idly Wet Maavu (Batter) இட்லி மாவு , Doasai Wet Maavu (Batter) தேராசை மாவு, Addai Wet Maavu (Batter) அடை மாவு, sold in loose condition (without any container / Brand) are taxable at 5% under Entry 51 of Part B of the First Schedule, provided such goods are not branded. The goods

dealt by the applicant-dealers are in the form of wet dough, and if the above goods are sold under "brand name" they may be classifiable under Entry 69 of Part-C of First Schedule as a residuary item. However, the rate of tax applicable on branded wet dough has been reduced by the following two Notifications issued under TNVAT Act, 2006:

(i).Notn No.II(1)/CTR/4(b-1)/2010 published in G.O.Ms.No.33 CT&R(B2), dated 29.03.2010 "Item No.(5) Branded ready mix food products (in the form of flour, powder or wet dough)" which makes a reduction in the rate of tax from 12.5% to 4% with effect from 01.04.2010

(ii).Notn. No.II(1)/CTR/12(R-29)/2011 published in G.O.Ms.No.78 CT&R(B2), dated 11.07.2011 "Item No.(5). Branded ready mix food products (in the form of flour, powder or wet dough)" which makes a reduction in the rate of tax from 14.5% to 5% with effect from 12.07.2011.

Therefore as per the above notifications, the Idly Wet Maavu (Batter) இட்லி மாவு , Doasai Wet Maavu (Batter) தோசை மாவு, Addai Wet Maavu (Batter) அடை மாவு sold under brand name are liable to VAT at 4% from 01.04.2010 to 11.07.2011 and at 5% from 12.07.2011 onwards.

6. In view of the above discussion, this committee clarifies that

(i) Idly Wet Maavu (Batter) இட்லி மாவு , Doasai Wet Maavu (Batter) தோசை மாவு, Addai Wet Maavu (Batter) அடை மாவு, sold without brand name are liable to tax at 5% under Entry 51 of Part B of the First Schedule to the TNVAT Act, 2006. The clarification issued already in ACAAR No.11/2013-14 (Acts Cell-II/13137/2013) is reiterated.

(ii) However, branded - Idly Wet Maavu (Batter) இட்லி மாவு , Doasai Wet Maavu (Batter) தோசை மாவு, Addai Wet Maavu (Batter) அடை மாவு are taxable at 12.5% for the period from 01.04.2008 to 31.03.2010 and at the reduced rate of 4% between the period from 01.04.2010 and 11.07.2011 as per Notn No.II(1)/CTR/4(b-1)/2010 published in G.O.Ms.No.33 CT&R(B2), dated 29.03.2010; and at the rate of 5% from 12.07.2011 onwards as per Notn.

No.II(1)/CTR/12(R-29)/2011 published in G.O.Ms.No.78 CT&R(B2),
dated 11.07.2011.

Dated this the Thirtieth day of December 2016.

Sd/- A. Sarvar Allam,
Additional Commissioner (PR)(FAC)

Sd/- K. Mahalingam,
Additional Commissioner (RP)

Sd/- Dr.C. Chandramouli, I.A.S
Additional Chief Secretary/
Commissioner of Commercial Taxes

To
Tvl. Arokiya Foods,
No81-A Azhagapuri Nagar,
Vellakovil - 638 111,
Tirupur District.

Copy to:
The Assistant Commissioner (CT)
Kangeyam Assessment Circle,

The Joint Commissioner (CT),
Salem Division.

The Joint Commissioner (CS)

To host in the Department Website

The Principal Secretary to Government, Commercial Taxes &
Registration Department, Chennai - 9.

All Joint Commissioners (CT) including Enforcement, LTU, MOU and
ISIC.

All Deputy Commissioners (CT), Territorial, Assessment and
Enforcement

All Head of Offices (Assessment)

The State Representative, Sales Tax Appellate Tribunal, Chennai-
104.

The Addl. State Representative, (AB) Chennai, Madurai and
Coimbatore.

The Director, CTSTI, Greams Road, Chennai - 6.

The Executive Officer, Traders Welfare Board, Chennai - 5.

The Accountant General (Audit)-II, No.44, Greams Road, Chennai -
6.

The Additional Commissioners, Deputy Commissioners, Assistant
Commissioners, Commercial Tax Officers in CCT's Office.

Personal Clerk to the CCT.

Stock File 3/ Acts Cell-II /Spare - 5.

//Forwarded/by Order//

U.S. Narayanan
3.1.17
Commercial Tax Officer