

PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND ADVANCE RULING			
<u>ACAAR No.042/ 2014-15.</u> (Acts Cell – II/21576/2014)	Dated 29.09.2014		
<u>Present:</u>	1. Thiru. K.Rajaraman, I.A.S., Principal Secretary & Commissioner of Commercial Taxes. 2. Thiru. R.Vayanaperumal, Additional Commissioner (CT), (Public Relations) 3. Thiru. K.Mahalingam, Additional Commissioner (CT), (Revision Petitions)		
1	Name and address of the Applicant	:	Tvl. Savera Industries Limited, No.146, Dr. Radhakrishnan Road, Mylapore, Chennai-600 004.
2.	Registration Certificate No.	:	TIN: 33100780353/CST:043033
3.	Date of application	:	08.07.2014
4.	Date of receipt of application	:	09.07.2014
5.	Clarification sought for	:	"Ready to eat Unbranded Foods and Drinks including sweets, savouries and non-alcoholic beverages" sold in Restaurant on ECR Road, Panaiyur
6.	Date of Personal Hearing	:	25.08.2014
7.	Represented by	:	Thiru. D.Adhishesha Reddy. Chartered Accountant & Authorized Representative

ORDER:

Tvl. Savera Industries Limited, No.146, Dr. Radhakrishnan Road, Mylapore, Chennai-608004 (TIN:33100780353), the registered dealers in Hotel Industry in the files of Royapettah –II Assessment Circle, have preferred application in Form 'VV' and sought clarification under Section 48-A (1) of the TNVAT Act, 2006, read with Rule 12-A of TNVAT Rules, 2007.

2. The applicant-dealers have sought for clarification on the following:

Rate of tax on sale of "Ready to eat Unbranded Foods and Drinks, including sweets, savouries and non-alcoholic beverages" in their restaurant located on ECR Road at Panaiyur Village.

3.1. The applicant-dealers have sought for personal hearing. The Authority for Clarification and Advance Ruling have convened a meeting for hearing on 25.08.2014 and the applicant-dealers were informed in writing to appear before the Authority on 25.08.2014. Thiru. D.Adhishesha Reddy, Chartered Accountant and Authorized Representative has represented the applicant-dealer before the Authority on 25.08.2014 and placed the facts relating to the clarification requested.

3.2. The applicant-dealers in their covering letter to their application for clarification have presented that they are running a Star Hotel at No.146, Dr.Radhakrishnan Road, Mylapore, Chennai-600004 and they are collecting and paying tax @ 14.5 % on their sale of foods and drinks restaurants in their Star Hotel premises, as specified under Section 7(10(a) of TNVAT Act, 2006. Whereas, the applicant-dealers have commissioned a restaurant on the ECR Road at Paniayur Village, which is away from the Star Hotel at the address aforesaid. The applicant-dealers have claimed that the sale of Unbranded foods and drinks in the restaurants not attached to the Star Hotels would attract the tax under section 7(1)(b) of the Act at the rate reduced to 2 % vide Notification. In order to avoid possible interpretation on the otherwise, it is prayed that the sale of unbranded foods and drinks in their restaurant may accordingly be clarified. The learned Chartered Accountant cum Authorized Representative of the applicant-dealers has also reiterated the same facts and prayer at the time of hearing.

4.1. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006 and Rules, 2007 and the provisions under section 7 of the TNVAT Act, 2006 relating to the levy of tax on unbranded foods and drinks in hotels and restaurants, including outdoor catering. The Clarification is given accordingly as under

4.2. Section 48-A of TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities.

4.3. The applicant-dealers have sought for clarification regarding rate of tax on sale of **"Ready to eat Unbranded Foods and Drinks including sweets, savouries and non-alcoholic beverages"** in their restaurant located on the ECR Road, Panaiyur Village, which is away from their Star Hotel at their principal place of business.

5.1. There is no Specific Entry of the Description, "Unbranded Foods and Drinks" in either of the Parts A and B of First Schedule to the Act. Section 7 provides for levy, collection and payment of tax on the sale of unbranded foods and drinks including sweets and savouries in Hotels, Restaurants and Sweet stalls including outdoor catering. Section 7 reads as extracted below:

7. Levy of taxes on food and drinks -

(1) *Notwithstanding anything contained in this Act, but subject to the provisions of this Act,-*

(a) *every dealer shall pay tax on the sale of ready to eat unbranded foods including sweets, savouries, unbranded non-alcoholic drinks and beverages served in or catered indoors or outdoors by star hotels recognized as such by Tourism Department of the State Government or Government of India and restaurants attached to such hotels at the rate of fourteen and half per cent of the taxable turnover; and*

(b) *every dealer other than those mentioned in clause (a) whose total turnover is not less than rupees ten lakhs for a year shall pay tax on the sale of ready to eat un-branded foods including sweets, savouries, un-branded non-alcoholic drinks and beverages served in or catered indoors or outdoors by hotels, restaurants, sweet-stalls, clubs, caterers and any other eating houses, at the rate of five per cent of the taxable turnover.*

Explanation I - For the purpose of computing the total turnover under this sub-section, the purchase turnover liable to tax under section 12 of this Act, shall be added to the sales turnover.

Explanation II - For the purpose of computing the total turnover under this sub-section, the sales turnover of all business units in a common premises sharing the common kitchen or common employees shall be added to the sales turnover of the business unit having higher turnover.

- (2) *The dealer who pays tax under clause (a) of sub-section (1) shall be entitled to input tax credit on the goods specified in the First Schedule purchased by him in the State.*

5.2. As per section 7(1)(a), sale of ready to eat unbranded foods including sweets, savouries, unbranded non-alcoholic drinks and beverages served in or catered indoors or outdoors by star hotels recognized as such by Tourism Department of the State Government or Government of India and restaurants attached to such hotels is taxable at the rate of 14.5 %. At the same time, sale of ready to eat unbranded foods including sweets, savouries, unbranded non-alcoholic drinks and beverages served in or catered indoors or outdoors by other hotels, restaurants and sweet stalls, not attached to such star hotels is taxable at the rate of 5 % as provided under section 7(1)(b) of the Act. The rate of tax on sale of ready to eat unbranded foods and drinks including sweets, savouries, non-alcoholic beverages under section 7(1)(b) is reduced from 4 % to 2 % under section 30 of the Act, vide Notification No. II(1)/CTR/(a-14)/2007 in G.O. Ms. No.12, CT & R (B2) Department dated 01.01.2007, with effect from 01.01.2007. Following the substitution of expression "four" employed originally in section 7(1)(b) with the expression, "five" with effect from 10.03.2012, the reduced rate of 2 % has been made to be continued in force, vide Notification No. II(1)/CTR/11(a-2)/2012 in G.O. Ms. No.32, CT & R Department dated 10.03.2012.

5.3. The restaurant stated to have been commenced at Panaiyur on the ECR Road is not attached to their Star Hotel premises at No.146, Dr.Radhakrishnan Road, Mylapore, Chennai-600004. It is located away from the star hotel and remains as a separate premises at Panaiyur. Therefore, sale of ready to eat unbranded foods and drinks including sweets, savouries and non-alcoholic beverages would attract tax only at the rate reduced rate of 2 % as per the notifications in G.O. Ms. No.12 dated 01.01.2007 and G.O.Ms. No.32 dated 10.03.2012 as aforesaid.

6. With this legal backdrop, the request of the applicant-dealers for clarification regarding rate of tax on sale of ready to eat unbranded foods and drinks including sweets, savouries including non-alcoholic beverages may be considered and accordingly clarified as below:

Sale of "Ready to eat Unbranded foods and drinks, including sweets, savouries and non-alcoholic beverages" at Farm House restaurant on ECR Road, Panaiyur village is taxable at the reduced rate of 2% under Section 7(1)(b) of the TNVAT Act, read with

Notification No. II(1)/CTR/(a-14)/2007 in G.O. Ms. No.12, CT & R (B2) Department dated 01.01.2007 and Notification No. II(1)/CTR/30(a-2)/2012 in G.O. Ms. No.32, CT & R (B2) Department dated 10.03.2012, as long if it is not classified as a star hotel.

Dated this, the 29th day of September 2014.

Sd/- R. Vayanaperumal,
Additional Commissioner (PR)

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

Sd/- K. Rajaraman,
Principal Secretary/
Commissioner of Commercial Taxes

To

Tvl. Savera Industries Limited,
No.146, Dr. Radhakrishnan Road,
Mylapore,
Chennai-600 004.

Copy to:

The Assistant Commissioner (CT)
Royapettah – II Assessment Circle

The Joint Commissioner (CT),
Chennai (East) 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 File3 / Acts Cell-II / Spare – 5.

//Forwarded/By order//


Additional Commissioner (PR)