

(Issued vide no. 637/ST-1, dated 7.4.2006)

**ORDER OF CLARIFICATION MADE BY SHRI L.S.M. SALINS,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003**

Querist: India Pasta Manufacturing Association

Indian Pasta Manufacturers Association has requested on the strength of Andhra Pradesh High Court judgement in the case of Jaya Food Industries Pvt. Ltd. Vs. Commercial Tax Officer, Hyderabad that vermicelli ("shevaya") be treated as maida for the purpose of taxation under the Haryana Value Added Tax Act, 2003 ('The Act') thereby declaring the same to be taxable @ 4%.

2. In Commissioner of Sales Tax v. Sultan Shev Co. [1977] 40 STC 583 the Bombay High Court held that "shevaya" is nothing but "maida flour" mixed with water and turned through a sieve into small filaments which are then dried up, and on that basis held that 'Shevaya' falls within entry 10 in Schedule A to the Bombay Sales Tax Act, which reads "Cereals and pulses in all forms and flour including atta, maida, besan, suji and bran prepared therefrom, but excluding maize flour.". In Alladi Venkateswarlu v. Government of Andhra Pradesh [1978] 41 STC 394 (SC) the Supreme Court held that "atukulu" and "muramaralu", which are called "parched rice" and "puffed rice" in English, fall within the expression "rice" which was covered by entry 66 of the First Schedule to the Act. Andhra Pradesh High Court followed these two judgments in [1984] 55 STC 160 State of Andhra Pradesh v. Karnatakam Govindayya Setty and Sons and held –

“We may point out that in Alladi Venkateswarlu v. Government of Andhra Pradesh [1978] 41 STC 394 (SC) the Supreme Court had to deal with one of the entries in the First Schedule and still they held that "parched rice" and "puffed rice" are rice. For preparing "parched rice" and "puffed rice" the process required

is much more elaborate than the process by which "maida" is turned into "shevaya". If "parched rice" and "puffed rice" is rice, we see no reason to hold that "shevaya" is not "maida". It should also be noticed that "shevaya" is a commodity of fairly common use. It is really an article of food and in such cases it is but appropriate that they should be treated as outside the net of higher taxability, if that can be done without doing violence to the language."

3. Later Andhra Pradesh High Court in [1991] 82 STC 319 Jaya Food Industries Pvt. Ltd. Vs. Commercial Tax Officer, Hyderabad decided on 12.8.1987 (cited by the Association) followed its earlier decision in [1984] 55 STC 160 State of Andhra Pradesh v. Karnatakam Govindayya Setty and Sons quoted above. Their Lordships M.H.Kania and L.M.Sharma,

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JJ., of the Supreme Court dismissed the State's special leave petition No. 3344 of 1988, vide order dated 4.12.1990, against the judgment and order dated 12.8.87 of the Andhra Pradesh High Court in W.P. No. 10832 of 1987 allowing a writ petition filed by the dealer challenging the assessment to tax on vermicelli under entry 129A of schedule 1 to the A.P, General Sales Tax Act, 1957 (which read "articles of processed food prepared wholly or mainly from flour of gram, cereals, pulses or oil-seeds"). The Supreme Court dismissed the special leave petition as infructuous because subsequently the entry had been amended so as to specifically include "vermicelli". (See [1991] 80 STC FRSC 4, Sl. No. 16.)

4. In Janajivan Foods Private Limited v. Sales Tax Officer, Ganjam-I Circle and Others [1987] 65 STC 185, Orissa High Court did not agree with the decision of Andhra Pradesh High Court in the case of State of Andhra Pradesh v. Karnatakam Govindayya Setty and Sons [1984] 55 STC 160 stating thus –

“... we are in respectful disagreement with the aforesaid view of the Andhra Pradesh High Court. The learned judges in that case have been swayed away by the factor that "semiya", is a commodity of common use and an

article of food and, therefore, it would be appropriate to treat it as outside the net of higher taxability. That cannot be, in our opinion, a rule of construction. The learned judges of the Andhra Pradesh High Court rejected the contention of the counsel appearing for the Revenue to apply the common parlance test, simply by saying "We are not impressed by this argument without giving any reasons therefor". But in our view, relying upon the observations of Pathak, J., in Delhi Cloth & General Mills' case [1980] 46 STC 256 (SC); AIR 1980 SC 1552, the common parlance test has been accepted to be a fairly well-settled principle to construe the meaning of any word or expression describing an article or commodity in a taxing statute. Applying the said test to the case in hand "semiya" would not come within entry No. 1, namely "atta, maida and suji". Neither a dealer nor a consumer would understand "semiya" to be the same thing as "maida". If a consumer goes to a dealer and asks for "semiya", obviously the dealer will not give him "maida", nor if a consumer asks for "maida" no dealer will give him "semiya". Howsoever little the process of transformation there might have been, "semiya" is a commercially different article altogether, so much so that a dealer of "atta, maida and suji" may not be

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dealing with "semiya" at all. In this view of the matter, we are unable to accept the contention of Mr. Pasayat that "semiya" is included within entry No. 1 meant for "atta, maida and suji". Necessarily, therefore, it has to be taxed under the residuary entry No. 101 meant for "all other articles" and the rate of tax is 8 per cent. The order of the assessing officer, therefore, is wholly justified and we do not find any infirmity in the same."

5. Taking note of the fact that the relevant entry in Andhra Pradesh was amended to include vermicelli and that the Orissa High Court did take into consideration the decision of the Andhra Pradesh High Court before coming to a well-reasoned conclusion that vermicelli is not maida, the correct position appears to be that vermicelli though made from maida is a different commercial commodity from maida.

6. In view of the above, it is concluded that vermicelli is not maida and at present it does not fall within entry 98 in Schedule C to the Act and rate of tax applicable on its sale is 12.5%.

(L.S.M.SALINS)

Chandigarh
Dated: 30.3.2006

Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise & Taxation Department

