

**IN THE COURT OF COMMISSIONER  
DEPARTMENT OF TRADE AND TAXES  
GOVERNMENT OF N.C.T. OF DELHI  
VYAPAR BHAWAN, NEW DELHI**

No: 242/CDVAT/2009/12

Dated: 20.10.2009

**M/s Glaxo Smithkline Consumer-Healthcare Limited  
C/o Sushil Verma Advocate  
J-10/21, Rajouri Garden, New Delhi-110027**

**ORDER**

Present for the Applicant : Sh. Sushil Verma, Advocate  
Present for the Department : Shri T.C. Sharma, DR.

The above named Applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and the question put up before this Court for determination under the aforesaid provision of law is as under:

**“Whether Horlick Nutribar is an item of sweetmeat and hence taxable at 4 percent under Schedule III of the Delhi Value Added Tax Act, 2004?.”**

2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through Challan No. 309920 dated 22-04-2009.
3. It is stated in the application that the Applicant has developed a product called "Horlicks Nutribar"- which is not a chocolate based product but the nutritional multi-cereal bar fortified with vitamins and minerals. The product is manufactured primarily from syrup and cereal ingredients. While the syrup phase consists of liquid glucose, invert sugar, vegetable fat, honey and condensed milk, Cereal ingredients comprise of extruded cereal, rice crispies and oats.
4. Sh. Sushil Verma, Advocate appeared on 26-08-2009 and filed written submission and a sheet giving the different dictionary meanings of 'sweetmeat'. The arguments were finally heard on 14-10-2009 and during the course of arguments the main stress was on the meaning of word 'sweetmeat' to be taken as per common parlance. It was concluded that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is the latter sense in a taxing statute the word must be held to have been used unless contrary intention is clearly expressed by the legislature. This principle is well settled by a long line of decisions of Canadian, American Australian and Indian cases. Pollock, J. Pointed out in Grenfell v. I.R.C. (875) 1 Ex D 242, 248 that if a Statute contains language which is capable of being construed in a popular sense, such a statute is not be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course', by the words "popular sense" that which people conversant with the subject matter with which the statute is dealing would attribute to it. The ordinary word in every day use are, therefore, to be construed according to their popular sense. Based on the above findings of various Courts the counsel was of the opinion that the item "Horlicks nutribar" is a 'sweetmeat' in common parlance.
5. The DR appearing on behalf of the department pointed out that 'sweetmeat' or 'sweets' in Indian context and also in popular sense are the traditional sweets commonly known as "Misthans" or "Mithai" and whereas the item under reference is a confectionery item. If the test laid down by various Courts is applied in this case most of the Indians would identify the traditional Indian sweets as sweetmeat.
6. The Counsel for the Applicant adduced the evidence in the form of Retail Invoices from two shops (along with samples of the product) viz. Religare Wellness Limited, J-210, Saket and M/s

Guardianlifecare Pvt. Ltd., Shop No. 1, LSC, J-Block Market, Saket, both selling the products called Rite Bite Sugarless Diet, Naturel and Rite Bite Merry Berry, which have been taxed @ 4%. This was used as evidence of the averment that similar products are being sold in the market and taxed @ 4% and therefore, the product under question viz. Horlicks Nutribar should also be treated similar and be taxed @ 4%.

7. In response, the DR also adduced evidence by way of tax invoices from six shops, giving range of products (including five flavours of said product Rite Bite) from Surendra's J-2/11, LGF, Khirki Extn., Malviya Nagar, N. Delhi, showing the product being taxed @ 12.5%. Three of the tax invoices relate purely to the chocolate products and one to candies, being taxed @ 12.5%.

8. The Counsel for the Applicant has argued that the chocolate based products are not to be compared and included in sweetmeat, nor is it his contention. At the same time, his argument would appear to be in favour of his product (Horlicks Nutribar) being compared at par with the product Rite Bite sugarless and Rite Bite Merry Berry, which are produced before me with the retail invoices as proof of the item being taxed @ 4%.

The DR has picked up precisely those items (Rite Bite in five different flavours including Merry Berry) to show that it is being taxed @ 12.5% elsewhere. Thereby, the DR has proved that the evidence adduced to the extent of the retail invoices, produced by the Counsel for the Applicant before me, have little value. It is therefore, a case of faulty implementation of the taxation rates; in summation, Rite Bite Merry Berry is being taxed in one shop (Applicant's case) @ 4%, while in another (DR's case) @ 12.5%. This Court cannot rely on either argument conclusively for this reason alone.

9. The Counsel for the Applicant has relied upon "common parlance" as the argument in support of his contention for treating Horlicks Nutribar as a "Sweetmeat". The Counsel's argument that the tax invoices are not proof per se, and have no evidential value in absence of the product, is neither here nor there, considering that it is the same product of which different taxation rates have been given by both sides; this Court does not feel the requirement of presence of the product itself as clinching evidence since it has not specifically been contested by the Counsel for the Applicant that in the said shop (Surendra's J-2/11, LGF, Khirki Extn., Malviya Nagar) the same product is being sold @ 12.5% of VAT.

10. The relevant entry in DVAT, Entry No. 85(a), Schedule III reads: "Sweetmeat and Namkin" (as per amendment dated 31.03.2008). The literature as regard the Nutribar, produced on 15.10.2009 by the Counsel for the Applicant, along with several other similar pieces of information adduced by him regarding "chocolates", with a view to distinguish his own product from those included "chocolate", is significant to peruse. By his own admission, Horlicks Nutribar is a nutritional multi-cereal bar fortified with vitamins and minerals. The product is manufactured primarily from syrup and cereal; the ingredients are typically, cereal and cereal products, sweeteners, milk solids, chocolates products, edible vegetable fat, nature identical flavoring substances, antioxidant, vitamins, salt, color, edible gum and which contains permitted natural color and added flavour.

11. The proportions irrespective, literature on the Nutribar adduced by the Counsel focuses heavily on being a Nutrition Health Supplement, snack bar, as a "meal replacement product", towards a weight-loss programme, and a protein supplement product. To this fact, it is fortified with various nutritions, to the extent of substitution of sugar by Aspartame.

This literature clashes with "common usage and common parlance" definition of "sweetmeat", if one reads the entire list of amendments carried out by the Government between May 2005 to March 2008. It is sought to be proved that the sweetmeat is the entire genus of product excluded from the domain of "Halwai Items" but within common parlance used as sweets, which should include the Horlicks Nutribar, as contended by the Counsel for the Applicant.

12. It is strongly felt that in the entry No. 85(a), the word "sweetmeat" would indicate all the items which are out side the purview of "Halwai Items", but such sweet as included in, say South Indian or East Indian cuisine etc. and, the traditional Indian sweets understood in the "common parlance" as sweetmeat in an Indian home but not strictly speaking "Halwai Items" which are typically

manufactured or sold by a Halwai shop in Delhi and those listed prior to amendment, 31.03.2008 in the entry No. 85 (a).

13. Currently, a series of desserts (pastry, ice cream, candy, toffee and such fusion dessert) are being treated as unspecified and taxed @ 12.5%. It would be a very narrow reading of the law if we treat chocolate as “not sweetmeat” and therefore, not comparable to the Horlicks Nutribar; if we treat chocolate as yet another flavour in a series of flavours manufactured by the same process and marketed under the same segment, one would arrive at the inescapable conclusion that Horlicks Nutribar is also to be treated a nutrition-supplement, meal-substitution snack, fortified with various substances to that end. The “sweetmeat” and “halwai product” would hardly meet these objectives in common parlance. It would also be a very narrow reading of the Law and its interpretation if the inclusion were to be based on the fact that Nutribar tastes sweet therefore it should be treated as a sweetmeat. Its very profile and market segmentation would show that it is a nutrition snack and not a sweetmeat.
  14. Treating the two retail invoices adduced by the Counsel for the Applicant, which show the rite bite taxed @ 4% as a faulty implementation issue, it is ordered that the said product, namely Horlicks Nutribar is not to be included as a sweetmeat, understood in the common parlance and does not find any place in any of the schedules of the Act including entry No. 85 of Schedule III, hence to be treated as an unspecified item and to be taxed @ 12.5%. Held accordingly.
-