

**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/16/302

- And -

In the matter of :

Sri Primit Goswami, Partner and others carrying on business under the trade name of M/s G.G. Enterprise at Loknath Housing Complex, Babupara, P.O. & District Japlaiguri PIN-735101

Present for the applicant: Primit Goswami, Partner and
Sri Ashish Gupta, Authorised Advocate

Sri Adesh Kumar, Additional Commissioner, Commercial Taxes/Sales Tax,
and Public Relations Officer (PRO) of the Directorate of Commercial Taxes,
was also present to assist in the matter

Date of order: 21.03.2017

This is an application filed by Sri Primit Goswami, Partner, carrying on business under the trade name of M/s G.G. Enterprise, 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 19835415056, has raised question for determination of rate of tax applicable to the sale of packaged Badshaha tobacco.

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 Prमित Goswami, the applicant submitted that the tobacco in question is an unmanufactured tobacco and is used in the manufacture of 'biri'. He furnished two sealed packets of the said tobacco weighing 8 gram each and showing MRP at Rs.5/-.

Sri Ashish Gupta, Advocate, submitted that the item in question falls under heading No. 2401 of Central Excise Tariff. He also furnished copy of a certificate issued by the Superintendent of Central Excise and Customs, Sangamner Range-II, Nasik-IV Division certifying that unmanufactured branded tobacco under the brand names of Gai Chhap, Badshaha and Cycle Chhap fall under Tariff item No. 2401-20-90 of the first Schedule to Central Excise Tariff Act, 1985. Sri Gupta pleaded that the tobacco in question falls under the entry at serial No. 37B of the West Bengal Value Added Tax Act, 2003.

The matter is examined. As per the samples furnished by the applicant it is seen that the item in question is a tobacco product and is sold in the market in packaged condition in air sealed packets of 8 gm each the maximum retail price of which is Rupees five. The packet contains small particles of tobacco and *prima facie* can not be said to be unprocessed or unmanufactured tobacco.

The existing entries related to tobacco under the West Bengal Value Added Tax Act, 2003, are as under:

(A) Entry at serial No. 37B of Schedule A is as under:

Serial No.	Description of goods.	Conditions and Exceptions
(1)	(2)	(3)
37B.	Biri, and unmanufactured tobacco including unmanufactured tobacco not stemmed, or partly or wholly stemmed or stripped, for manufacture of biris, specified under heading 2401 of the Central Excise Tariff Act, 1985 (5 of 1986). Explanation— The expression "tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.	

(B) Entry at serial No. 1 under Schedule D is as under:

Serial No.	Description of goods.	Rate of Tax
(1)	(2)	(3)
1.	Chewing tobacco, and pan masala of any type, when sold in a packaged condition.	35%

It may be noted here that the entry at serial No. 1 of Schedule D enumerates chewing tobacco when sold in a packaged condition and has no reference to the Central Excise Tariff Act.

To find out how the item, namely packaged Badshaha tobacco, was understood in common parlance or identified or dealt with by people dealing in tobacco products at market place a local enquiry was conducted. Several small pan shops selling tobacco products were visited by the Assistant Commissioner of Sales Tax and almost all the shopkeepers dealing in tobacco products, like small pan shops, identified the product as 'khaini' mixed with 'jarda' and none of them identified the item as tobacco used in manufacture of 'biri'. The packaging in 8 gm airtight packets itself suggests that the item is not packaged for 'biri' manufacturers but for direct consumption of tobacco users.

In view of the above the item 'packaged Badshaha tobacco', is held to be a chewing tobacco sold in packaged condition taxable @ 35% under section 19 of the West Bengal Value Added Tax Act, 2003, read with entry at serial No. 1 of Schedule D appended to the Act.

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/-21.03.2017
(Smaraki Mahapatra)
Commissioner,
Sales Tax, West Bengal