



Government of Karnataka
Commercial Taxes Department

**PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES,
(KARNATAKA), BANGALORE- CLARIFICATION UNDER SECTION 59(4) OF THE
KARNATAKA VALUE ADDED TAX ACT, 2003.**

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Sub: KVAT Act, 2003 - Clarification under Section 59(4)
regarding rate of tax applicable on 'badam milk / drink' - reg.

Ref: Applications dated: 14-06-2013 and 05-08-2013
of M/s MTR Foods Private Limited, Bangalore .
TIN No.-29150098627.

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In the application dated 14-06-2013 cited above, the applicant, namely, M/s MTR Foods Private Limited, No.4, 17th Cross, K.R.Road, BSK 2nd Stage, Bangalore – 560 070 has sought clarification regarding the rate of tax applicable on 'badam milk / drink'.

2. Section 59(4) of the Karnataka Value Added Tax Act , 2003 empowers the Commissioner of Commercial Taxes to clarify the rate of tax payable under the Act, if he considers it necessary or expedient so to do, for the purpose of maintaining uniformity in the work of assessments and collection of revenue. It is examined and found that the clarification requested by the petitioner is within the scope of the aforesaid provision and it is necessary that the clarification be issued for the purpose of maintaining uniformity in the work of assessments and collection of revenue.

3. As requested, the applicant was heard on 05-08-2013. During hearing, the applicant's authorised representative Sri K.R.Kini, Advocate has filed written submissions as under.

"The product sold by us is Badam milk / drink. The Hon'ble Uttarakhand High Court in the case of Gujarath Co-operative Milk Marketing Federation Ltd. Vs. Commissioner of Commercial Taxes, has held that masala butter milk being made by adding masala to butter milk is butter milk and is exempted. Here it may be noted that serial No.25 of the First Schedule in Uttarakhand Value Added Tax Act reads – "Fresh milk, pasteurized milk, butter milk, separated milk, curd and lassi" which are exempted.

...2.

In view of the Hon'ble High Court considering Amul Masti Spiced Butter Milk to be butter milk it rightly got covered in the above entry and was exempted.

It may be appreciated that the process followed by us which has been depicted in the process chart is of similar nature and accordingly Badam milk / drink is nothing but UHT milk.

Considering the above to our understanding UHT milk added with almonds, sugar etc. sold as Badam milk / drink is predominantly UHT milk and is taxable at 5.5% as per Entry No.86 to the Third Schedule of the KVAT Act, 2003”.

4. The matter is examined.

(1) Badam milk (badam drink) is produced after various processes. The process chart furnished by the applicant indicates that the raw materials needed are UHT (Ultra High Temperature) milk, badam flakes, saffron etc.,. UHT milk undergoes various processes namely filtration, chilling, pre-heating, homogenization, pasturation, addition of badam drink mix, badam flakes etc. Thus it ceases to be UHT milk falling under entry 86 of the Third Schedule to the KVAT Act, 2003. Badam milk made with UHT milk as one of its constituents is a different and distinct commodity as known to trade and consumers.

(2) The Hon'ble Supreme Court, in the case of Ramavatar Budhaiprasad etc Vs Assistant Sales Tax Officer, Akola (reported in 12 STC 286) while deciding the dispute as to whether 'betel leaves' are 'vegetable' or not has held that the word 'vegetable' must be interpreted not in a technical sense but in its popular name as understood in common language. It therefore held that 'betel leaves' are not 'vegetables'. This view of common parlance test has been reiterated in by the Hon'ble Court in many other cases involving similar disputes, a few of which are as follows;

(i) Annapurna Biscuit Manufacturing Co. Vs. Commissioner of Sales Tax, U.P. Lucknow (1981) 48 STC 254 (S.C)

(ii) Filterco and Another Vs. Commissioner of SalesTax, M.P. and another (1986) 61 STC 318 (S.C).

