

Read : Application dt.23.01.2012 by M/s. Sunanda Agro Products Ltd.  
Heard : Sh. B.B. Sulhyan [CA] & Sh. Abhijeet Naik [Managing Director].

## PROCEEDINGS

(under section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2012/Adm-6/2/B- I

Mumbai, dt. 6/05/2015

An application is received from M/s. Sunanda Agro Products Ltd., holder of TIN27260653585, situated at Taluka Shirala, District Sangli, seeking determination of the rate of tax on 'Maize Germ (Extraction for Germ Oil cake)' sold under invoice no.10 dt.08.08.2011.

### 02. FACTS AND CONTENTION

The applicant company is engaged in the manufacture of 'Starch', 'Germ' & 'Cattle-feed' by processing on Maize at its factory situated at Taluka Shirala, District Sangli in Maharashtra. It is submitted that as there is no entry for 'Maize Germ' in the schedules under the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002), they were advised by their Auditor to pay tax @ 12.5%. However, it is the belief of the applicant that since 'Maize Germ' is being used specifically for the manufacture of edible oil (maize germ oil) as well as for animal feed; it is contended that since the impugned product is used in the production of edible oil, it is an oil seed and therefore, would be covered by the schedule entry C-68 of the MVAT Act, 2002, taxable @ 5%. It is contended that in other States also, 'Maize Germ' is taxable @ 4% or 5% as under:-

| Sr. no. | Name of States   | Schedule Entry | Rate of tax |
|---------|------------------|----------------|-------------|
| 1.      | Jammu & Kashmir  | 85             | 5%          |
| 2.      | Himachal Pradesh | 189            | 4%          |
| 3.      | Uttar Pradesh    | 1183           | 4%          |
| 4.      | Haryana          | 54             | 4%          |

### 03. HEARING

The case was taken up for hearing on dt.26.12.2014 when Sh. B.B. Sulhyan [CA] & Sh. Abhijeet Naik [Managing Director] attended. It was contended thus -

1. The product for determination is 'Maize Germ'. It is claimed that the impugned product falls in the schedule entry A -9 which is "Cereals (other than paddy, rice and wheat) in whole grain, split or broken form and their flour whether sold singly or in mixed form". It is contended that the product maize germ is a cereal in split or broken form. It is submitted that the same is manufactured from maize which is broken/coarse grinded to obtain the maize germ.
2. The other schedule entries which are claimed applicable are :
  - i. C-68 - This entry is for *oil seeds*. It was brought to their notice that maize germ is not mentioned in the list given under this entry.
  - ii. A-41 - This entry is for *seeds*. Therefore, it was queried whether the maize germ has reproductive capacity when sown in the soil. It was submitted that the maize germ would not be able to reproduce. Reproduction would be only when the maize i.e. corn is sown and not the germ. It was contended that the dictionary meaning (Farlex Trivia Dictionary The Free Dictionary) of 'germ' is 'seed'.
3. The applicant is presently charging tax @ 5% under schedule entry C-68.
4. It is requested that if the contention is not acceptable then the order be made effective prospectively.

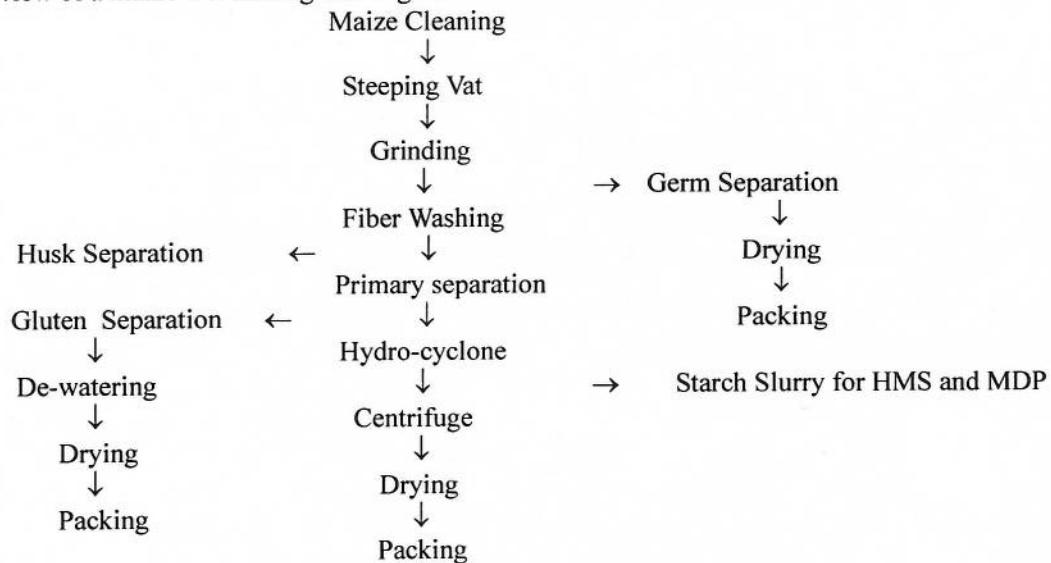


The applicant was asked to provide a written submission about the process flow, etc. within 10 days. Accordingly, the written submission dt.26.12.2014 is reproduced verbatim thus -

1. "Manufacturing Process

**PROCESS TECHNOLOGY**

A view of a maize wet milling unit is given below:



The different steps involved in the above stated wet milling are as below.

- **Receiving**  
The corn is transported to the unit in trucks in gunny bags and offloaded in receiving area or in silos. The receiving area should be designed in such a manner that there is enough space for smooth movement of expected number of vehicles. The grain is fed to the belt conveyor which takes the maize grains to cleaning section.
- **Cleaning**  
The grain contain various impurities like cobs, stones, metal parts, dust, other foreign matter etc. These unwanted materials are removed in cleaning section. The grain is passed over perforated metal sheets, air blowers, electromagnets to remove the impurities.
- **Steeping**  
The grain is fed into large steep tanks with hot water at 52° C and steeped for 70 hr. Generally, RCC steep tanks are used by the existing units in India. However, steep tanks can also be fabricated by stainless steel but it increase the capital cost. The RCC tanks should be designed in such a manner that withstand the gravitational force, as well as the weight of the material. Steeping mixture containing sulfur dioxide (SO<sub>2</sub>) @ 0.2 per cent concentration in hot water is added in the steeping tanks to prevent germination and bacteria. The steeping conditions the grain for later steps by softening of the maize kernels and loosen the bonds between germ, husk and endosperm. During the soaking process, nutrients are absorbed into the water and this water is later evaporated to concentrate the nutrients to get corn steep liquor or condensed corn fermented extractives.
- **Grinding**  
The grinding process is completed in 2 stages. The grinders are made of stainless steel with adjustable RPM with or without pneumatic settings. There are a number of manufacturers of grinding machines in India. In first stage, the steeped maize grains are ground coarsely to loosen the husk and germ. The second stage grinding, known as fine grinding, help in detaching the germ from the grain.
- **Germ Separation (Degermination)**  
The pasty mix obtained after fine grinding is pumped to water filled settling troughs, known as germ separators or degerminators. It is a 3 stage process where the slurry containing soluble husk, gluten and starch are separated from germ. The lighter density rubbery germ float on the top and is skimmed off. The germ is passed to germ drier which is finally sent to oil extraction unit. The germ contains 45 per cent oil and the rest is crude fibre and moisture. The starch manufacturers generally prefer to sell germ rather than own oil extraction unit.

The Germ is then dried and packed separately for sales.

2. We had claimed that Maize germ should be included in Schedule Entry No. A 41 i.e. "Seeds of all types



excluding seeds to which any other entry of Schedule C applied“.

With regards the same we would like to submit to your honour the Dictionary Meaning of seed: The dictionary meaning of Germ as per the "Thefreedictionary.com" is as follows :

*"Germ is an earliest form of an organism, a seed, bud or spore"*

It is very clear from the above that Germ is nothing but a seed. Your honour had raised doubt whether any reproduction is possible from Germ, we would like to state that even if there is no reproduction possible from germ it is a seed. Reproduction is not the only criteria on which a product is categorized as seed. Even the meaning of seed as per "Thefreedictionary.com" is as follows :

*"A Source or Beginning ; A GERM"*

From the above we are of the opinion that Germ should fit in Schedule A 41 *"Seeds of all types excluding seeds to which any other entry of schedule C applied"*

2. We had also claimed that Maize Germ can be included in Schedule Entry No. A 9 i.e. *"Cereals (other than paddy, rice and wheat) in whole grain, split or broken form and their flour whether sold singly or in mixed form"*

We would also like to submit your honour the meaning of cereals as per the "Thefreedictionary.com" & meaning of cereals as per Google which is as follows :

*(Plants) any grass that produces an edible grain, such as oat, rye, wheat, rice, maize, sorghum and millet*

&

*"a grain used for food, for example wheat, maize, or rye"*

From both the above meanings it is clear that Maize is a Cereal and should be included in Entry A-9."

A re-hearing was held in the matter on dt.18.04.2015. The submission as made earlier was reiterated. However, the applicant expressed desire to pursue only the schedule entries A-9 and A-41 of the MVAT Act,2002 as being applicable to the impugned product.

#### 04. OBSERVATIONS

I have gone through the facts of the case. The product for determination before me is 'Maize germ'. It is claimed that the impugned product is covered by the following schedule entries under the MVAT Act,2002 -

|      |   |
|------|---|
| A-9  | <i>Cereals (other than paddy, rice and wheat) in whole grain, split or broken form and their flour whether sold singly or in mixed form</i> |
| A-41 | <i>Seeds of all types excluding seeds to which any other entry of schedule 'C' applies.</i>   |

Both the entries being in Schedule 'A' under the Act, it is, thus, the claim that the product attracts nil rate of tax. The third claim of the applicant was in respect of the product being an oilseed under schedule entry C-68 of the Act. However, during hearing it was made known to the applicant that the impugned product does not find a mention in the products enumerated under schedule entry C-68 for "Oil seeds, that is to say:-". So the applicant decided not to pursue the claim in respect of the said entry. I would go through each of the afore-reproduced two claims in the order as above. However, prior to that I would refer to the earlier determination orders passed which are relevant to the issue at hand.

#### M/s. Unique Sugar Limited (No.DDQ-1189/ADM-5/313/B-26 dt.19.12.1991)

The product involved herein was referred to as 'maize germ' which was informed to be obtained as a by-product during the manufacture of starch from maize. Here too, the claim was under the then schedule entry A-8 under the repealed Bombay Sales Tax Act,1959 (BST Act) for cereals. Since there were doubts regarding the exact nature of the product, a reference was made to the



Solvent Extractor's Association of India who informed that in common parlance the maize germ cake obtained by wet processing of maize is considered as a oil-cake and not as a broken or split maize. In view of it, a proposal was sent to the applicant for classifying the product under schedule entry C-I-13 of the BST Act. It was also proposed that in view of notification entry no.154 issued under section 41 of the BST Act, the product would be exempt from tax. The applicant gave their consent to the view and therefore, it was determined that the sale of maize germ is covered by the scope of schedule entry C-I-13 of the BST Act and by virtue of notification entry no.154 is exempt from tax. This entry C-I-13 read thus - 'Oil cakes' and the notification entry no.154 provided thus - 'Sales of oil cakes including oil cake used as cattle feed within the State of Maharashtra.'

The facts peculiar to the above determination order in M/s. Unique Sugar Limited (cited supra) need to be mentioned in clear terms thus :

- a. Wet maize germ is obtained as a by-product during the manufacture of starch from maize.
- b. The germ is fed to a press machine.
- c. In the process part of the oil content (about 2 to 2.5%) is removed from it.
- d. The germ when pressed forms into slabs or cakes.
- e. It is further dried and marketed as a maize germ.
- f. It was stated by the applicant that the same is used as a cattle feed.

An opinion was obtained from Solvent Extractor's Association of India who informed that in common parlance the maize germ cake obtained by wet processing of maize is considered as an oil-cake and not as a broken or split maize.

The above exercise was necessary for ascertaining the similarity with regard to the facts in the present determination proceedings. The facts herein i.e in the present determination proceedings before me are different and could be seen thus :

- i. Maize is cleaned.
- ii. It is kept in Steeping Vats.

[Steeping is the soaking in liquid (usually water) of a solid so as to extract flavours or to soften it.]

[The applicant informs - The steeping conditions the grain for later steps by softening of the maize kernels and loosen the bonds between germ, husk and endosperm.]

- iii. The next operation is grinding.

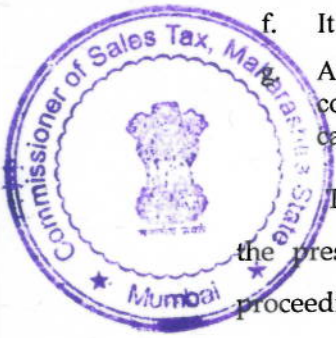
[The applicant informs - The grinding process is completed in 2 stages. In first stage, the steeped maize grains are ground coarsely to loosen the husk and germ. The second stage grinding, known as fine grinding, help in detaching the germ from the grain.]

- iv. The grinding stage causes the separation of the germ.

[The applicant informs - The pasty mix obtained after fine grinding is pumped to water filled settling troughs, known as germ separators or degerminators. It is a 3 stage process where the slurry containing soluble husk, gluten and starch are separated from germ. The lighter density rubbery germ float on the top and is skimmed off.]

- v. The germ is then dried.

[The applicant informs - The germ is passed to germ drier which is finally sent to oil extraction unit. The germ contains 45 per cent oil and the rest is crude fibre and moisture. The starch



*manufacturers generally prefer to sell germ rather than own oil extraction unit.]*

vi. The last stage is packing of the maize germ.

*[The applicant informs - The Germ is then dried and packed separately for sales.]*

Thus, it can be seen that the product in the aforesaid determination order was fed to a Press machine and in doing so some of the oil content is removed from it and the pressed maize germ forms into slabs or cakes. The product in such form and of such content was further dried and marketed as 'maize germ'. Whereas the product in the present proceedings is the dried maize germ only and is not subjected to any press machine or formation of cakes or slabs. During hearing, the applicant in the present proceedings had shown the components of a dried corn in terms of the grain, the germ, the gluten, the husk etc. Since the maize germ is not subjected to the operation of pressing, it is not in the form of cakes or slabs and is therefore, sold in the germ form itself as a dried germ.

The applicant in the aforementioned determination had informed that the product is used as a cattle feed whereas the Solvent Extractor's Association of India had opined that the maize germ cake is considered as an oil-cake. Now an oil cake is defined such that it is *the solid residue that is left after certain oily seeds, such as cottonseed and linseed, have been pressed free of their oil. It is ground and used as cattle feed or fertilizer.* Thus, an oil cake is devoid of oil whereas in the instant case, the maize germ is sold for being used in extraction of oil therefrom and the applicant has been very particular about this aspect while explaining the product in his application. Even the invoice mentions thereon that the impugned maize germ is sold for extraction of germ oil cake. A point to be noted is that the product in the aforesaid determination order was sold as cattle feed even while it was referred to as 'maize germ'. Whereas the applicant in the present case sells maize germ for oil extraction. To ascertain whether the terms maize germ and maize germ oil cake could be synonymously used, I refer to certain references thus -

**E-book extract - Handbook on Ingredients for Aquaculture Feeds By J.W. Hertrampf, F. Piedad-Pascual, Sik Lee Ong - Page 273**

*Maize germs contain around 50% oil. The valuable oil is used for human consumption and is obtained by solvent extraction and screw-pressing, respectively. The by-product is maize germ meal or maize germ cake. Fresh maize germs are prone to rancidity due to its high content of unsaturated fatty acids.*

*Maize germ meal may also be available as a by-product from the brewery and distillation industry. This type of product usually contains only 10% crude protein.*

*Maize germ meal has a high protein content (Table 28-13). Data on amino acids are in Table 28-03. Crude fibre content increases with extraction of the oil, thus, reducing the digestability of the organic matter. Maize germ meal is a good source of Vitamin E.*

*Table 28-13: Chemical composition of maize germs and maize germ meal (% in dry matter)*

|   | <i>Maize germs</i> | <i>Maize germ meal (solvent extracted)</i> | <i>Maize germ meal (screw pressed)</i> |
|---|--------------------|--|--|
| <i>Crude protein</i>                          | 13.9               | 24.6                                       | 22.5                                   |
| <i>Crude fat</i>                              | 49.2               | 2.2  | 7.4                                    |
| <i>Crude fibre</i>                            | 5.7                | 9.4  | 10.5                                   |
| <i>Ash</i>                                    | 4.8                | 5.0  | 3.5                                    |
| <i>N-free extract</i>                         | 26.4               | 58.8                                       | 56.1                                   |
| <i>Digestability of organic matter (pigs)</i> |                    |  |  |

## **FEEDIPEDIA**

*Maize germ meal (corn germ meal) (also known as maize oil cake) is the by-product of oil extraction from maize germs obtained from maize processing. It is a product of moderate to good nutritive value suitable for all classes of livestock but its composition is highly variable.*

### *Process*

*Maize germ, which contributes about 11% of the kernel weight, contains 45-50% oil and about 85% of the oil kernel (CRA, 2009). The germ is a distinct entity that can be easily separated and then extracted to produce maize oil, yielding maize germ oil meal as the main by-product (Crawshaw, 2004). The germs themselves are obtained from maize processing from wet milling (starch production) or dry milling (maize grits, maize flour, maize meal, ethanol production) (Ewing, 1997; Stock et al., 1999). Germs are removed in the wet milling process to facilitate starch extraction whereas they are removed in the dry milling process to improve the stability of maize grain products for food uses (Moreau et al., 2005). In the wet milling process, maize grain is steeped in water and then separated into kernels, from which starch is later extracted, and germs. The germs are washed, dried, and extracted first by mechanical extraction and then by solvent (hexane). Maize germ meal consists of the spent germs and other maize grain fragments (CRA, 2006; BeMiller et al., 2009). In the dry milling process, abrading action strips away the germ and pericarp while leaving the endosperm intact. While the endosperm continues through the milling process, the combined bran and germ are aspirated to remove the bran, allowing the germ to be extracted, yielding oil and maize germ meal (Stock et al., 1999).*

*It is important to note that while there are official definitions for maize germ meal and maize germs, these products are actually part of a continuum of loosely named by-products yielded by the wet milling and dry milling maize industries. Products sold under these names may contain variable or even substantial amounts of bran, endosperm fragments and other residues. Maize germ meal from the wet milling industry can be very close to corn gluten feed, and maize germ meal from the dry milling industry can be very close to maize bran or hominy feed. Likewise, it is difficult to tell poorly extracted maize germs from low-oil maize germs from dry milling. The names themselves can also be a source of confusion: in French, "tourteau de germes de maïs" (maize germ meal) sounds like "tourteau de maïs" (hominy feed); in English, "maize germ meal" can easily be mistaken for "maize germs" and studies about "maize germ meal" (a product containing 1 to 20% oil) may actually concern full-fat maize germs (50% oil). Unlike most ingredients, maize germ meal is not a single product but a group of products of widely differing nutritional value.*

### *Distribution*

*Maize germ meal and maize germs are feed commodities traded worldwide.*

### *Maize germ meal*

*Maize germ meal obtained from the wet milling process of starch production has a relatively high protein content (22-31% DM). The crude fibre content is moderate (10% DM) but the NDF content is high and variable (30-60% DM). Residual oil ranges from less than 3% to more than 10%, reflecting differences in oil extraction efficiency. Oil-rich maize germ meal from wet milling is slightly poorer in protein than well defatted maize germ meal (25-32% vs 22-30% DM). Like other maize by-products, maize germ meal tends to be poor in lysine (about 4% of the protein) though richer than maize grain (3%). Maize germ meal from wet milling is relatively close to corn gluten feed but contains more protein, more oil, less fibre and about the same amount of starch and is therefore of higher nutritional value. Maize germ meal is particularly rich in phosphorus, since the germ contains much of the P in the grain (Widmer et al., 2007).*

*Maize germ meal obtained from dry milling has a lower protein content (10-20% DM), less fibre and more starch than maize germ meal obtained from wet milling. Residual oil again depends on the extraction method and can also vary between less than 1% up to more than 20% DM.*

### *Maize germ*

*Maize germ obtained from wet milling usually contains 11-16% DM of protein and 40-50% oil (Miller et al., 2009). Maize germ from dry milling contains a little more protein (13-18% DM) and much less oil (20-30% DM) (Moreau et al., 2005). The residual oil contains 16% palmitic acid (16:0), 28% oleic acid (18:1) and 56% linoleic acid (18:2) (Miller et al., 2009).*

What can be deduced from the above is that maize germ and maize germ meal (maize germ cake) are different commodities. I would conclude the discussion on the aforementioned determination order by observing that the same would not be applicable to the product in the present proceedings as the commodities are not the same. The commodity in the present one will

be used for oil extraction while the commodity therein was an oil cake from which is the residue left after oil has been extracted.

Before looking at the other determination order, I would just refer to one aspect, rather observation as can be derived from the aforesaid determination order. I have mentioned earlier that, in the present proceedings too, there is a claim with regard to the impugned product being a cereal. In the aforesaid determination order, it was observed that the by-products namely maize germ or the maize germ oil cake obtained during the manufacture of starch from maize was not considered as a broken or split maize. This observation was based on the opinion obtained from Solvent Extractor's Association of India. I would elaborate on this aspect at a later stage in the present proceedings.

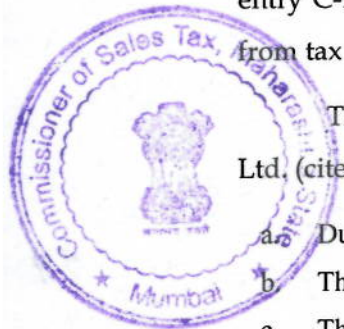
**M/s. Universal Starch Chem Allied Ltd. (No.DDQ.1189/ADM-5/314/B-27 dt.19.12.1991)**

The product involved herein was referred to as 'maize oil cake'. The applicant was engaged in the activity of maize crushing. In the process dry maize germ is obtained as a by-product. The maize germ has fairly high oil content, hence, oil is extracted by feeding it to oil expellers. The residue left after the extraction of oil is sold as maize oil cake. It was stated by the applicant that the same was used as a cattle feed. It was held that the product in question, *prima facie*, is an oil cake. The matter was referred to the Solvent Extractor's Association of India who informed that in common parlance the impugned product is known as an oil-cake. In view of it, a proposal was sent to the applicant for classifying the product under schedule entry C-I-13 of the BST Act. It was also proposed that in view of notification entry no.154 issued under section 41 of the BST Act, the product would be exempt from tax. The applicant gave their consent to the view and therefore, it was determined that the sale of 'maize oil cake' is covered by the scope of schedule entry C-I-13 of the BST Act for 'Oil cakes' and by virtue of notification entry no.154 is exempt from tax (Sales of oil cakes including oil cake used as cattle feed within the State of Maharashtra).

The facts peculiar to the above determination order in M/s. Universal Starch Chem Allied Ltd, (cited supra) need to be mentioned in clear terms thus :

- a. During maize crushing, dry maize germ is obtained as a by-product.
- b. The maize germ has fairly high oil content, hence, oil is extracted by feeding it to oil expellers.
- c. The residue left after the extraction of oil is sold as maize oil cake.
- d. It was stated by the applicant that the same was used as a cattle feed.
- e. An opinion was obtained from Solvent Extractor's Association of India who informed that in common parlance the maize germ cake is considered as an oil-cake.

I have already reproduced the facts in the present determination proceedings before me on pages 4 and 5 of this order. A perusal of the facts in the above order and the present determination proceedings reveals that the product in the aforesaid determination order was fed



to an expeller for extraction of oil and the residue left after extraction of oil is sold as maize oil cake. Whereas, as observed earlier also, the product in the present proceedings is the dried maize germ only and is not subjected to any expeller for oil extraction and neither is it the residue left after extraction of oil. The applicant in the aforementioned determination had informed that the product is used as a cattle feed and the Solvent Extractor's Association of India had opined that the maize germ cake is considered as an oil-cake. Thus, the product in the determination order of 1991 in M/s. Universal Starch Chem Allied Ltd. (cited supra) is not the same as the one in the present proceedings.

M/s. Universal Starch Chem Allied Ltd. preferred yet another application for determination in the year 2002. The same was decided in the year 2003, the details of which are as follows :

**M/s. Universal Starch Chem Allied Ltd. (No.DDQ-11-2002/Adm-5/19/B-12 dt.28.03.2003**

The product involved herein was referred to as 'maize germ'. The applicant referred to the earlier determination order in their case and argued that the earlier Determination Order classifies the product 'Maize Germ' as 'Oil Cakes'. It was contended that "Maize Germ" contains about 40% of Oil, which is edible and Oil Cakes are used as Cattle Feed. It was contended by him that the determination dt.19.12.1991 is very old one and hence for clarity the issue needs to be resolved since the schedule entries have undergone changes over the period of time. After referring to the earlier determination order in the applicant's case as also in the case of M/s. Unique Sugar Limited (cited supra), the Commissioner observed that the product before him, 'Maize Germ', is identified as a product containing 40% oil and is not the Oil Cake produced after extracting oil from 'Maize Germ' as was considered in the earlier determination but is the 'Maize Germ with oil contents' and therefore, held that the ratio of the earlier Determination Orders would not be applicable to the facts of the applicant. Hence, the Commissioner went into detail about the process and the product as follows :

Maize Germ is Upper Layer (germ) of Maize obtained on treating Maize with Dilute Sulphurous Acid water and steam, thus producing Soft Maize which separates upper layer termed as Germ and Germ-free portion. The upper layer on washing and drying produces Maize Germ, which is sold by the Applicant. This Maize Germ contains 40% of oil (Edible Grade). This product could be akin to a medium rich in oil contents such as Oil Seeds. It is subjected to an Expeller Process taking out Crude Oil which gets subsequently refined and the ultimate product is 'Cornello (Maize Oil).

After going through the process, the Commissioner recorded his observations thus :

1. *The Schedule Entry A-9 is meant for Cereals and Pulses but it excludes 'Maize Flour'. The product under consideration cannot be treated as 'Maize Flour' however, for the purpose of classification it would be necessary to examine how the treatment is given to the product of Maize. For that purpose the reference to Schedule Entry A-9 seems relevant which relates to Cereals and Pulses but excludes Maize Flour.*

2. *The Schedule Entry A-8 relates to 'Cattle Feed, Poultry Feed and Aquatic Animal Feed'.*
3. *The entry for Oil Seeds appears at Sr. No. 8 in Schedule 'B' appended to the Act describing twenty items in it. This list does not include 'Maize or Maize Germ'. Therefore, the product cannot be considered as Oil Seeds in terms of Entry B-8.*
4. *The other entry relevant for consideration is Schedule Entry C-I-5, which considers Oil Cakes including De-oiled Cakes. The product Oil Cake as understood in common parlance, is a residue obtained from Oil Seeds on extracting Oil therefrom. The Oil Cake does contain residual traces of oil, which is subsequently utilised for further extraction and the ultimate residue is De-oiled Cake in the process of Solvent Extraction. Generally, in common parlance, the Oil Cake is a product obtained on extracting oil from Oil Seeds in Expeller Process whereas De-oiled Cake is a product obtained on extracting oil from Oil Cake in the process of Solvent Extraction. From the functional utility point of view the product under consideration namely ' Maize Germ ' can not be equated with Oil Cake and therefore, this entry is also of no relevance.*
5. *The other relevant entry for consideration is C-I-18 which includes Starches, Maize Flour, Tapioca Flour and Tamarind Seed and powder thereof. The principle of noscitur-a-sociis suggests that the interpretation should be made in respect of the products placed together based on common functional utilities and in analogous sense and not in general sense. By adopting these principles it would be obvious that this entry covers the item provided therein which are seen and understood as Starch-based Medium. The product under consideration viz. Maize Germ ' cannot be construed as a Starch-based Medium' and therefore it would not get included in this Entry.*
6. *The other relevant entry I would like to focus in detail is B-8. This entry accommodates 'Oil Seeds' of 20 different categories. The items from these categories as termed 'Oil Seeds'. On close examination it could be seen that all the items provided in this entry and classified in 20 different categories represents Seeds of certain plant. In no case other Seeds are included in this entry. Another distinguishing feature on close scrutiny shall certainly be that in respect of these Oil Seeds the contents of Oil Seeds are rich in oil and not the upper layer therefore they are considered Oil Seeds. In the present case Maize Seeds if considered, the contents of this is a 'Starch-based Medium' whereas contrary to Oil Seeds the upper layer contains oil. In this situation the Maize Germ cannot be equated with Oil Seeds layer contains oil. In this situation the Maize Germ or inclusion thereof under Entry B-8.*
7. *I have gone through all relevant entries and find that there is no appropriate classification for product under consideration and therefore it would get classified in Residuary Entry C-II-152.*

I have elaborately reproduced the relevant observations as were expressed in the given set of facts as were existing in the above determination order of 2003. It can be seen that the exercise undertaken by me after reproducing the details in the determination order in the case of M/s. Unique Sugar Limited (cited supra) was also done in this determination order of 2003 in the case of M/s. Universal Starch Chem Allied Ltd. (cited supra). The product in the determination order



of 2003 was not an oil cake but a maize germ, which was identified as a product containing 40% oil and was not the oil cake produced after extracting oil from 'Maize Germ'.

The product in the proceedings before me is a dried maize germ from which oil has not been extracted and therefore, is not a maize germ oil cake. We have seen earlier that maize germ and maize germ oil cake are different commodities. And the claim in the present proceedings is with respect to the following entries :

|      |   |
|------|---|
| A-9  | <i>Cereals (other than paddy, rice and wheat) in whole grain, split or broken form and their flour whether sold singly or in mixed form</i> |
| A-41 | <i>Seeds of all types excluding seeds to which any other entry of schedule 'C' applies.</i>   |

We have seen that in the determination order decided in 2003 in the case of M/s. Universal Starch Chem Allied Ltd. (cited supra), the claim for coverage of the maize germ, containing oil for extraction, under the then schedule entry for cereals was not found appropriate. The Solvent Extractor's Association of India had opined in the case of M/s. Unique Sugar Limited (cited supra) that the maize germ oil-cake cannot be considered as broken or split maize. Though the observations were in respect of maize germ oil cake i.e the residue left after extracting oil, the same applies equally to the maize germ containing oil for extraction. The words 'in whole grain, split or broken form' apply to the cereal and not to the different parts comprising the cereal. The split or broken form herein does not apply to the individual components of the maize being separated into. A cereal whole grain comprises the endosperm, the grain and the bran. Whole grain form is the natural form of a cereal. And a split form thereof, certainly doesn't mean a separated part of the grain as in the present case. I need not deliberate further on this as in the determination order of 2003, the claim under this schedule entry has been dealt with and not found appropriate.

I would therefore move on to the next claim of the schedule entry claimed applicable to the impugned product and which is that the product is a 'seed'. This claim was not tendered for consideration in the earlier determination order of 2003. Hence, I proceed to ascertain its appropriateness. In the determination order in the case of Bhawalkar Vermitech Pvt. Ltd. (No.DDQ-11/2014/Adm-6/2/B-4 dt.21.11.2014), a claim in respect of the aforesaid entry for 'seed' was discussed and the observations therein are worth reproducing thus -

"In terms of plant biology, a seed as generally understood is the *unit of reproduction of a flowering plant, capable of developing into another such plant.* As per the Concise Encyclopedia on merriam-webster.com,

*'seed' is the reproductive structure in plants that consists of a plant embryo, usually accompanied by a supply of food (endosperm, which is produced during fertilization) and enclosed in a protective coat. In typical flowering plants, seed production follows pollination and fertilization. As seeds mature, the ovary that enclosed the ovules develops into a fruit containing the seeds. Most seeds are small, weighing less than a gram; the smallest contain no food reserve. At the opposite extreme, the seed of the double coconut palm may weigh up to about 60 lb (27 kg). Seeds are highly adapted to transportation by animals, wind, and water. When circumstances are favorable, water and oxygen penetrate the seed coat, and the new plant begins to grow. The longevity of seeds varies widely: some*

remain viable for only about a week; others have been known to germinate after hundreds or even thousands of years.

The Wikipedia explains the seed thus :

*"A seed is an embryonic plant enclosed in a protective outer covering called the seed coat, usually with some stored food. It is a characteristic of spermatophytes (gymnosperm and angiosperm plants) and the product of the ripened ovule which occurs after fertilization and some growth within the mother plant. The formation of the seed completes the process of reproduction in seed plants (started with the development of flowers and pollination), with the embryo developed from the zygote and the seed coat from the integuments of the ovule.*

*Seeds have been an important development in the reproduction and spread of gymnosperm and angiosperm plants, relative to more primitive plants such as ferns, mosses and liverworts, which do not have seeds and use other means to propagate themselves. This can be seen by the success of seed plants (both gymnosperms and angiosperms) in dominating biological niches on land, from forests to grasslands both in hot and cold climates.*

*The term "seed" also has a general meaning that antedates the above—anything that can be sown, e.g. "seed" potatoes, "seeds" of corn or sunflower "seeds". In the case of sunflower and corn "seeds", what is sown is the seed enclosed in a shell or husk, whereas the potato is a tuber.*

*Many structures commonly referred to as "seeds" are actually dry fruits. Plants producing berries are called baccate. Sunflower seeds are sometimes sold commercially while still enclosed within the hard wall of the fruit, which must be split open to reach the seed. Different groups of plants have other modifications, the so-called stone fruits (such as the peach) have a hardened fruit layer (the endocarp) fused to and surrounding the actual seed. Nuts are the one-seeded, hard-shelled fruit of some plants with an indehiscent seed, such as an acorn or hazelnut."*

Since the MVAT Act,2002 does not have a definition of 'seed', it would be useful to refer to the definition of 'seed' as per the other enactments concerned with regulating the production, distribution and sale of seeds :

#### **Seeds Act,1966**

*"seed" means any of the following classes of seeds used for sowing or planting-*

*(i) seeds of food crops including edible oil seeds and seeds of fruits and vegetables;*

*(ii) cotton seeds;*

*(iii) seeds of cattle fodder;*

*and includes seedlings, and tubers, bulbs, rhizomes, roots, cuttings, all types of grafts and other vegetatively propagated material, of food crops or cattle fodder;*

#### **Seed Bill, 2004**

*"seed" means any type of living embryo or propagule capable of regeneration and giving rise to a plant of agriculture which is true to such type;*

There are provisions under the Seed Act,1966 whereby the Central Government specifies the minimum limits of germination and purity with respect to any seed of any notified kind or variety. There is also a seed certification agency. Further, there is also a provision such that no person shall carry on the business of selling or supplying any seed of any notified kind or variety unless such seed is identifiable as to its kind or variety, conforms to the specified minimum limits of germination and purity and complies with such other requirements as may be prescribed. Apart from the provisions and responsibilities cast by the statute, what should be seen is that the definitions refer to the seed as one which is used for sowing or planting so as to multiply species of its kind. In so reproducing, it doesn't remain the seed which was planted or sown but gets transformed into the next process of the reproduction cycle. I need to mention herein that even by Trade Circular No.12T of 2005 dt.07.06.2005, it was clarified to the Trade that all types of sowing seeds are covered by the scope of the impugned entry."

It can thus be seen that the 'seed' as understood by the schedule entry A-41 of the MVAT Act,2002 is one which is used for sowing or planting so as to multiply species of its kind. The applicant was specifically enquired as to whether the impugned product can be used for sowing.



It was replied to in the negative. The use of the impugned product is for extraction of oil as informed by the applicant. The above reproduced elaborate assessment of the meaning of a 'seed' in the determination order in Bhawalkar Vermitech Pvt. Ltd. (cited supra) should leave no doubts in the matter. Therefore, the argument of the applicant that reproduction should not be considered as the only criteria of a seed is not found acceptable when we see that the references made to the Seed Act or the Trade Circular issued by the Department do not point to any contrary view. In view thereof, the claim of the impugned product being covered by the aforesaid schedule entry is not found acceptable.

There is no other specific entry under the schedules appended to the MVAT Act, 2002 under which the impugned product could be said to be covered. The product, therefore, falls in the residuary schedule entry E-1, thereby taxable @12.5%.

#### 05. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect to the determination order if the contention as put forth is not acceptable. As is the case, a request for prospective effect is always to be tested on the parameters of the attending circumstances and applicable provisions and further as to the possibility of any scope for misinterpretation of provisions or statutory misguidance. In the present case, we have seen the claims as regards the applicable schedule entries as sought to be made by the applicant. In the determination application, the applicant had requested for favourable consideration of the impugned product in the 5% tax slab under the schedule entry for "oil seeds". With regard to this claim, the applicant was aware that the said schedule entry covers only the oil seeds as enumerated under the entry. And therefore, during hearing in the matter, request for classification thereunder was withdrawn by the applicant. Then during hearing, the applicant placed reliance on the schedule entries for 'cereals' and 'seeds', both claims falling in the nil tax bracket. As to the claim under 'cereals', more specifically under 'cereal in split form', I have shown that this claim was rejected under an earlier determination order. During hearing, the applicant himself had expressed knowledge about earlier determination orders in the matters connected to the present proceedings. However, even if we say that the applicant is unaware of the earlier determination orders, much insight was not needed to understand that the split form of cereal is not the separated part of the cereal. It is the grain in split form and not a grain which has been processed as in soaked and grounded and thereafter, the parts thereof separated and each of these being claimed to be the split form of the grain. Therefore, with regard to both the claims, it is seen that the applicant was applying his own erroneous interpretation. I find that the applicant has placed reliance on the schedule entries as available in other States. I have perused these entries. And I find that the entry for 'maize germ' exists but these States also have entries for 'cereals' and 'seeds' as well as 'oil

seeds'. Thus, separate provision has been made in the other States. It goes on to show that even when there were entries for 'cereals' and 'seeds' as well as 'oil seeds', the States had to carve out a separate entry for the impugned product. An obvious inference of this is that the impugned product does not fit into the description of 'cereals' and 'seeds' as well as 'oil seeds' and therefore, the States had to go in for a separate and specific entry. Thus when the applicant is himself giving examples of schedule entries as available in other States, it goes on without saying that the applicant is aware that similar situation is not found in the MVAT Act,2002. As for the provision as found in other States and not a similar one under the MVAT Act,2002, I would have to say that in determination proceedings, I am called upon to interpret provisions as are available and not ones which should or ought to have been made. Therefore, availability of a similar provision in other States does not influence the determination proceedings under the MVAT Act,2002. In view of all above, I find that no case for favourable consideration of the request for prospective effect is made out in the instant proceedings. The request, therefore, needs to be rejected.

06. In the circumstances, it is determined thus -

**ORDER**

(under section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2012/Adm-6/2/B- 1

Mumbai,dt. 6/05/2015

It is herewith determined that -

*The product 'Maize Germ (Extraction for Germ Oil cake)' is not covered by the schedule entries A-9 and A-41 of the MVAT Act,2002.*

- b. *There being no specific entry for the impugned product under the Schedules appended to the MVAT Act,2002, the same falls in the residuary schedule entry E-1, thereby liable to tax @125%.*
- c. *For reasons as discussed in the body of the order, the request for prospective effect is rejected.*



  
(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,  
MAHARASHTRA STATE, MUMBAI