

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

**Querist : M/s Goya Agro Industries Pvt. Ltd., Khanpur Kolian, Kurukshetra
TIN No. 11037.**

The querist, M/s Goya Agro Industries, Pvt. Ltd., is engaged in the business of manufacturing of Rice Bran Oil out of rice bran. In the process of manufacturing, the product derived is Rice Bran Oil which is taxable under the Haryana VAT Act and de oiled rice bran which is exempted from tax under the Act. Clarification has been sought on the point which input tax credit can be reversed on pro rata basis on de oiled rice bran i.e. the exempted goods received as bye-product.

The point has been examined in light of relevant provisions under the Haryana VAT Act viz. proviso (i) & (ii) of section 8(1) of the Haryana VAT Act and judgment delivered by Hon'ble Haryana Tax Tribunal Chandigarh in case of M/s Jai Bharat Gum & Chemical Ltd., Siwani (STA No. 726 of 2004-05, dated 15.02.2006).

Proviso (i) of section 8(1) provides that where the goods purchased in the State are used or disposed off partly in the circumstances mentioned in schedule 'E' and partly otherwise, the input tax in respect of such goods shall be computed pro rata. Proviso (ii) further provides that if input tax in respect of any goods purchased in the State has been availed of but such goods are subsequently used or disposed off in the circumstances mentioned in schedule 'E', the input tax in respect of such goods shall be reversed.

According to entry 5(iii) of schedule 'E', in case of all goods except those mentioned at serial No. 1 and 2 i.e. **petroleum based fuels and natural gas and capital goods**, when used in the manufacturer or packing of exempted goods, except when such goods are sold in the course of export of goods out of the territory of India, input tax shall be nil.

Hon'ble Haryana Tax Tribunal in judgment cited above viz. M/s Jai Bharat Gum & Chemicals Ltd. has also ruled out full input tax credit in respect of the input tax paid on the goods used in manufacture if part of the goods have gone into the manufacturing of tax free goods such as bye product or waste product. In the concluding part the tribunal has observed as under :-

“It seems that while introducing provisions in the VAT Act legislature wanted to set at rest the view taken earlier as to how purchase tax on the purchase of raw materials is to be adjusted/refunded, when raw material produces two commodities one taxable and the other non-taxable. These provisions aim at allowing pro rata refund.”

In view of legal position explained above, if the raw material is used by the manufacturing unit for manufacture of taxable and tax free goods, input tax paid on the inputs shall be reversed on pro rata basis in respect of the tax free goods manufactured, be it the manufactured product or by product. However, if the tax free goods manufactured are sold in the course of export of goods out of the Territory of India, input tax in such circumstances shall be allowed against the goods used in manufacture of tax free goods as well. The matter is clarified accordingly.

Chandigarh
Dated :9.06.2008

(RAMENDRA JAKHU)
Financial Commissioner and Principal Secretary
to Government Haryana, Excise and Taxation
Department.

Issued vide letter No. 1552-54/ST-I , dated 07.07.2008