

From

The Excise & Taxation Commissioner,
Haryana.

To

All Deputy Excise Taxation Commissioners (ST),
in the State of Haryana.

No.479/ST-2, Chandigarh, dated the 26th March 2002

Subject – Rate of tax applicable on inter-State sale of gram dhal

Memo.

A.G. Audit has pointed out that gram dhal sold inter-State during 1998-99 by a dealer has been assessed to tax @1% without C-form while the same, being declared goods, should have attracted tax @2%, i.e., double the rate applicable on sale of gram or gram dhal under the Haryana General Sales Tax Act, 1973 (for short Local Act), which was 1% during 1998-99. The matter has been examined in this office. The considered view of this office is as follows:

Gram and gram dhal are declared goods and same thing under Local Act

1. Gram is declared goods being one of the pulses listed in clause (via) of section 14 of the Central Sales Tax Act, 1956 (for short Central Act). The relevant entry reads–
“(via) Pulses, that is to say-

- (i) gram or gulab gram(Cicerarietinum L);
- (ii)...”

Under clause (d) of section 15 of the Central Act pulses whether whole or separated, and whether with or without husk, are treated as single commodity. The clause reads –

“(d) each of the pulses referred to in clause (via) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.”

Thus for the purpose of sales tax law of a State, gram and gram dhal are one and the same thing.

Rate of tax applicable on the sale of gram or gram dhal under the Local Act

2. At the time of coming into force of the Local Act with effect from 05-5-1973, the rate of sales tax on Gram and gram dhal was notified to be 3%, vide notification no. 111/H.A.20/73/S.15 dated 05-5-1973. This was revised to 4%, vide notification no. 41/H.A.20/73/S.15 dated 18-4-1975. Gram and gram dhal were not declared goods at that time. These were included in the list of declared goods vide Parliament Act No.103 of 1976 which received the assent of the President on 07-9-1976. This put a ceiling on the rate of sales tax on gram and gram dhal at 4% and if no rate of tax is specified on

gram or gram dhal, the rate of tax will be 4% by virtue of clause (ii) of proviso to sub-section (1) of section 15 of the Local Act, reading thus –

“(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax, at such rates, not exceeding, -

(a) ...

(b) ...

Provided that-

(i) ...

(ii) in the case of declared goods, the rate of tax shall, unless a lower rate is fixed by the State Government by notification, be four paise in a rupee.”.

Rate of tax on gram was reduced to 1% vide notification no. S.O.18/ H.A.20/ 73/ S.15/ 91 dated 31-1-1991 with effect from 01-2-1991. It was kept at the same level when all rates of sales tax were notified afresh vide notification No.S.O.46/H.A.20/73/S.15/96 dated 29-3-1996. The entry 6 in the notification read –

| “Serial No. | Description of goods | Rate of tax in percent |
|----------------|---|---------------------------|
| 6. | Gram (Channa), Gram Dall, Gram Flour, Besan | 1.0” |

The aforesaid notification was superseded by notification No.S.O.46/H.A.20/ 73/S.15/ 2000 dated 3-3-2000 with effect from 04-3-2000 when no rate of tax was specified on gram or gram dhal. Thus rate of tax on gram and gram dhal is 4% since 04-3-2000. On gram flour and besan also, it is 4% vide entry at serial no.9 in the said notification.

Rate of central sale tax

3. According to clause (a) of sub-section (2) of section 8 of the Central Act, the rate of tax applicable on inter-State sale of declared goods not covered by sub-section (1) shall be twice the rate applicable on the sale of goods inside the State. An inter-State sale is not covered under sub-section (1) when it is made to a person who is not a registered dealer or when it is made to a registered dealer who does not furnish C form, vide sub-section (4).

4. The Government of a State has, under sub-section (5) of section 8 of the Central Act, power to exempt from tax or lower rate of tax applicable on inter-State sale of any goods by issuing a notification. The Government of Haryana in exercise of powers conferred upon it under sub-section (5) issued a notification dated 16-5-1970 published in the Government gazette dated 19-5-1970 stating, inter alia, that rate of tax applicable on inter-State sale of gram dhal would be the same as applicable on its sale inside the State with effect from 01-6-1970. The notification, still operative, reads, as under -

“S.O.175/C.A.74/56/S.8/70. – In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956, the Governor of Haryana being satisfied that it is necessary so to do in public interest, hereby directs that with effect from the **first June, 1970**, the tax payable by any dealer, having his place of business in the State of Haryana, under clause (b) of sub-section (2) of section 8 of the said Act, in respect of the sale by him in the course of inter-State trade of commerce of goods mentioned below to any dealer, shall be calculated at the rate **applicable to the sale of such goods in the State** of Haryana:

Wheat and its flour including Maida and its flour, Bajra and its flour, barley and its flour, paddy, rice, gram, **Dhal gram**, gram flour, Churi (Wand), Mung and Dhal Mung, Mash and Dhal Mash, Moth and Dhal Moth, Masoor and Dhal Masoor, Malka Masoor and Dhal Malka Masoor, Arhar and Dhal Arhar, Jowar and its flour, guar, its flour and guar giri and guar meal, dried peas and its Dhal and flour, and Chilka of all foodgrains, cereals and pulses.”

4.1. Further, the Government of Haryana issued notifications under sub-section (5) of section 8 of the Central Act specifying rate of tax on inter-State sale of gram dhal but not including gram @2% against C form and @4% otherwise from time to time. These notifications nos. S.O.98 dated 30-10-1985, S.O.24 dated 01-4-1986, S.O.28 dated 31-3-1987, S.O.52 dated 31-3-1988 and S.O.52 dated 31-3-1989 covered between themselves the period from 01-11-1985 to 31-3-1990. Thereafter, the Government issued notification no.S.O.59 dated 28-3-1990 specifying rate of tax on inter-State sale of gram dhal against C-form @1% and without C-form @4% with effect from 01-4-1990. This notification, still operative, reads-

“S.O.59/C.A.74/56/S.8/90.-In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and in supersession of Haryana Government, Excise and Taxation Department, notification No.S.O.52/C.A.74/S.8/89, dated the 28th March, 1990, the Governor of Haryana being satisfied that it is necessary so to do in public interest, hereby directs that with effect from the **first day of April, 1990**, the tax payable by any dealer, having his place of business in the State of Haryana, in respect of the sales of **gram dhal but not including whole gram**, made by him in the course of inter-State trade of commerce to any registered dealer having his place of business in any other State or Union Territory in India, shall be calculated at the rate of **one percentum** of his turnover or any part there of which relates to such sales subject to the **production of form C** as prescribed under sub-section (4) of section 8 of the Central Sales Tax Act, 1956 and where **no such declaration** is produced the tax shall be calculated at the rate of **four percentum**.”

Conflict between the notifications

5. The question that now arises is that what will be the effect of the notification dated 28-3-1990 on the operation of the earlier notification dated 16-5-1970 in so far as they relate to rate of tax on inter-State sale of gram dhal without C-form. It is apparent that the later notification does not expressly supersede the earlier notification nor does it appear to have been so designed because while the 1970-notification relates to a number of commodities the 1990-notification restricts itself only to gram dhal. We shall try to resolve this issue by aid of a court judgement.

5.1. A somewhat similar matter came before the Supreme Court in Commissioner Sales Tax, U.P. v. Agra Belting Works [1987] 66 STC 1. The Court observed and held, as under -

“Per R.S. PATHAK, C.J. and RANGANATH MISRA, J. (B.C. RAY, J., dissenting): Section 3 is the charging provision in the U.P. Sales Tax Act, 1948, section 3A authorises variation of the rate of tax and section 4 provides for exemption from tax. When, after a notification under section 4 granting exemption from liability to sales tax in respect of a certain class of goods, a subsequent notification under section 3A prescribes the rate of tax leviable on an item of that class, the intention is to withdraw the exemption and make the sale liable to tax at the rate prescribed in the notification. The power both of granting exemption and of varying the rate of tax, vests in the State Government and a notification of recall of exemption is not a condition precedent to imposing tax at any prescribed rate by a valid notification under section 3A.

Per B.C. RAY, J. (dissenting): Although the notification under section 3A of the U.P. Sales Tax Act, 1948, has been made subsequent to the notification issued under section 4 of the Act, the subsequent notification under section 3A will not prevail over the general exemption granted under section 4.

By a notification under section 4 of the U.P. Sales Tax Act, 1948, dated 25th November 1958, "cotton fabrics of all kinds" were exempted from payment of sales tax under that Act. By a subsequent notification dated 1st December 1973, "beltings of all kinds", which fell within "cotton fabrics of all kinds" were made taxable at the rate of 7 per cent.

Held, accordingly (by R.S. PATHAK, C.J. and RANGANATH MISRA, J.) (B.C. RAY, J., dissenting), that the levy of sales tax at the rate of 7 per cent on the sales of beltings under the notification dated 1st December, 1973, was justified, notwithstanding the earlier notification dated 25th November, 1958, under which "cotton fabrics of all kinds" were exempted. The second notification

had the effect both of withdrawing the exemption and of providing for a higher rate of tax on beltings.

Per B.C. RAY, J. (dissenting): So long as the general exemption granted under section 4 with regard to cotton fabrics of all kinds continues, no sales tax can be imposed on beltings of all kinds which fall within cotton fabrics of all kinds, and the general exemption under section 4 will prevail over the notification under section 3A of the U.P. Sales Tax Act, 1948.”

We may conclude from the above judgement of the Apex court that the later notification dated 28-3-1990 which specifically deals with rate of tax applicable on inter-State sale of gram dhal will hold the field with effect from 01-4-1990 by eclipsing the application of the earlier notification dated 16-5-1970.

5.2. It may, however, be pointedly noted that the notification dated 28-3-1990 shall not apply so far as it specifies a higher rate of tax than otherwise applicable under sub-section (1) or (2) of section 8 for the reason that the power of the State Government under sub-section (5) of section 8 extends only to specifying a lower rate of tax and not higher than otherwise applicable under sub-section (1) or (2), as the case may be.

6.. To sum up, the position that emerges could be tabulated, as under -

Commodity: Gram dhal

| Period | Local rate | CST rate | | Remarks |
|-------------------------|------------|-------------|----------------|---|
| | | With C form | Without C form | |
| 05-5-1973 to 17-4-1975 | 3% | 3% | 3% | 16-5-1970 notification applicable |
| 18-4-1975 to 07-9-1976 | 4% | 4% | 4% | 16-5-1970 notification applicable |
| 08-9-1976 to 31-10-1985 | 4% | 4% | 4% | 16-5-1970 notification applicable |
| 01-11-1985 to 31-3-1990 | 4% | 2% | 4% | Notifications issued from time to time under section 8(5) of the Central Act (See paragraph 4.1.) |
| 01-4-1990 to 31-1-1991 | 4% | 1% | 4% | Notification dated 28-3-1990 issued under section 8(5) of the Central Act shall apply. |
| 01-2-1991 to 3-3-2000 | 1% | 1% | 2% | Notification dated 28-3-1990 shall apply so far as it does not specify higher rate of tax otherwise |

| | | | | |
|-------------------|----|----|----|---|
| | | | | applicable under section 8(2) of the Central Act. |
| 04-3-2000 onwards | 4% | 1% | 4% | Notification dated 28-3-1990 shall apply. |

7. These instructions may be brought to the notice of all assessing authorities. While the assessing authorities, revising authorities and other officers may make use of the contents of this memo. in so far as they are satisfied that the same are in accordance with law, they are advised not to refer to the memo. as such in their orders.

Excise and Taxation Officer (ST),
for Excise and Taxation Commissioner,
Haryana.

Endorsement No. 480/ST-2, Chandigarh dated the 26th March 2002

A copy is forwarded to the following for information —

1. All Additional Excise and Taxation Commissioners in the State of Haryana;
2. All Joint Excise and Taxation Commissioners in the State of Haryana;
3. All Joint Directors (Legal) in the Excise and Taxation Department;
4. All Deputy Excise and Taxation Commissioners except (ST) in the State of Haryana;
5. System Analyst (Computer) for e-mailing to all the field offices; and
6. S.T.-II for including in Annual Sales Tax circular 2001.

Excise and Taxation Officer (ST),
for Excise and Taxation Commissioner,
Haryana.