

**COURT OF THE ADDITIONAL COMMISSIONER (VAT & IT)**  
**COMMERCIAL TAXES DEPARTMENT, RAJASTHAN, JAIPUR**  
**Present: Shri Har Sahay Meena, IAS**

P.5(C)178/TaxRate/ACCT/VAT&IT/09 / ३०३

Date : 1९-1-२०1०

M/s. P.S.B. Udhyog,  
B-189, Road No. 9F, V.K.I. Area,  
Jaipur.

Date of hearing : 29/12/2009

TIN 08571652052

Date of decision : 29/12/2009

Present on behalf of the dealer : Shri T.C. Jain, Advocate

**Order Under Section 36 of Rajasthan Value Added Tax Act, 2003**

1. The applicant filed an application U/S. 36 of RVAT Act, 2003 on 10/12/2009 in which the following disputed question of law was raised for determination :-  
**"What is the rate of tax payable on sale of powder of Marble, Soap Stone, Calcite China Clay and other minerals obtained from grinding of said minerals, when sale of such powder is affected within the State of Rajasthan under Rajasthan VAT Act?"**

2. In this regard the dealer was given an opportunity of hearing on 29/12/2009, Shri T.C. Jain, Advocate appeared on behalf of the applicant and requested to determine the disputed question of law.

3. Shri T.C. Jain argued that after purchasing the minerals mentioned above by grinding process finished product mineral powder is obtained which in fact is other form of the minerals.

4. He also argued that in grinding of mineral to powder shape no manufacturing activity is involved and sale of mineral powder amounts to resale of mineral from which the powder is obtained by grinding process. This view was expressed in various Supreme Court and Rajasthan High Court decisions and Hon'ble Commissioner in proceedings under section 40 of the Rajasthan Sales Tax has accepted this proposition vide decision dated 11/06/2001 rendered in case of assessee themselves.

5. The Schedule IV S. No. 31, 81, 94 and 171 are as under :-

S. No.	Description of Goods	Rate of Tax %
31	Clay including fireclay, fine china clay, ball clay	4
81	Lime, Lime stone, clinker and dolomite	4
94	Ores and minerals excluding (i) all kinds of building stones (ii) marble and (iii) granite in all their forms	4
171	all kinds of marble and granite (w.e.f. 25.2.08)	4

6. The Schedule IV Part B S. No. 186, 204, 206 are as under :-

S. No.	Description of Goods	Rate of Tax %
186	China Clay	4
204	Soap Stone	4
216	Marble and granite block and laffer	4

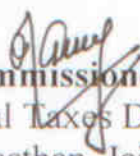
7. As per section 2(22) of RVAT Act 2003 "manufacture" includes every processing of goods which brings into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government.
8. As per Section 2(27) of RST Act 1994 "manufacture includes every processing of goods which brings into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government.
9. The above issue was examined by the Assessing Authority and the Committee of the Department.
10. I have gone through the record, arguments advanced by the learned Authorized Representative of the dealer and carefully gone through the record, facts submitted by the Assessing Authority in his comments as well as opinion given by the State Level Departmental Committee.
11. The question raised by the applicant has already been decided by the Additional Commissioner (Anti Evasion) No. P. 4(D)(24)(40)TaxRate/ACCT/AE/924 dated 13/06/2001 as mentioned U/S. 40 of RST Act which is para materia to the section 36 of RVAT Act 2003. In the reported case the applicant is same and the question is also same in nature, therefore the order of the Additional Commissioner (Anti Evasion) dated 11/06/2001 applies on this question also. As such the rate of tax payable on sale of powder of marble, soap stone, calcite and china clay obtained from grinding of said minerals, shall be same as payable on these minerals as may be notified under RVAT Act 2003.
12. But in the matter of M/S Rajasthan Mineral Traders decision No. P.5(C) 99/TaxRate/VAT/L/CCT/08/718 dated 04/01/2010 it is already decided by the below signatory that *"Marble powder is a commercially different and distinct commodity from marble /marble khanda / tukda/ or marble laffer. Even the use of marble powder is different from marble or marble khanda or marble tukda or marble laffer. Similarly dolomite powder is the commodity obtained by application of manufacturing process of grinding of dolomite lumps. Dolomite powder is a commercially different and distinct commodity from dolomite."* In the decision *"Marble & Dolomite are commodities which are taxable in independent form in commercial world. Powder of Marble & Dolomite is different commercial commodity in common parlance as well commercial parlance."* is also mentioned.
13. In the determination dated 13/06/2004 it has been held that making powder of mineral is not a manufacturing process but as per decision dated 04/01/2010 if by doing so the commercially separate different and distinct commodity is emerged then the rate of tax will be change.
14. As per <http://en.wikipedia.org/wiki/Mineral> the definition of mineral is "A **mineral** is a **naturally occurring solid formed** through geological processes that has a characteristic chemical composition, a highly ordered atomic structure, and specific physical properties. A rock, by comparison, is an aggregate of minerals and/or mineraloids, and need not have a specific chemical composition. Minerals range in composition from pure elements and simple salts to very complex silicates with thousands of known forms.

An **ore** is a type of rock that contains minerals with important elements including metals. The ores are extracted through mining; these are then refined to extract the valuable element(s).

The definition of minerals are naturally occurring solid formed, but after some processing and grinding, it does not remain in the same natural occurring solid form and so we can not call it mineral and call it mineral powder. The commercial uses of any mineral and its powder are different. In the Schedule IV of the RVAT Act 2003 Entry No. 216 'Marble and granite block and laffer' but not marble powder is mentioned in this entry likewise in Schedule IV entry No. 195 Chalk Powder and entry No. 197 Quartz Powder is mentioned but the powder of soap stone, calcite and china clay are not mentioned in the same Schedule.

15. Hence, the disputed question mentioned above is determined as under:-

**"There is no prescribed rate for Marble Powder, Soap Stone powder, Calcite Powder, China Clay Powder and other mineral powder obtained from grinding of said minerals. If sale of such powder is affected within the State of Rajasthan under Rajasthan Value Added Tax Act, rate of tax on such goods shall be as per prescribed in Schedule V of Rajasthan Value Added Tax Act 2003."**


  
Additional Commissioner (VAT & IT)  
Commercial Taxes Department,  
Rajasthan, Jaipur

P.5(C)178/TaxRate/ACCT/VAT&IT/09/2014.

Date : 13.1.2014.

Copy forwarded to the following for necessary action:

1. Commissioner, Commercial Taxes Department, Rajasthan, Jaipur.
2. Additional Commissioner(Legal/Tax), Commercial Taxes Department, Raj, Jaipur
3. Deputy Commissioner (Adm), ,Rajasthan.
4. Deputy Commissioner (I.T.), Jaipur for website.
5. A.C./C.T.O Circle E, Jaipur.
6. M/S. P.S.B. Udhyog, B-189, Road No. 9F, VKI Area, Jaipur.
7. Guard File.

  
Additional Commissioner (VAT & IT)  
Commercial Taxes Department,  
Rajasthan, Jaipur