

Read : Application dt.25.02.2012 by M/s. Ferretero India (P) Ltd.

Heard : Shri P.V. Surte, Advocate.

PROCEEDINGS

(under section 56(1) (e) of the MVAT Act, 2002)

No. DDQ 11/2012/Adm-6/6/ B- |

Mumbai, dt. 1 | 2 | 2014

An application is received from M/s. Ferretero India (P) Ltd., holder of TIN 27180822215V, situated at New Gat No.440, Om Ware House, Katkewadi, Wagholi, Pune-412207 seeking determination of the rate of tax on the product 'Narrow Woven Fabric Sling' sold through Invoice No.247 dt.09.12.2011.

02. FACTS & CONTENTION

The applicant informs that he is engaged in the business of manufacture and sales of narrow woven fabric. It is informed that the applicant has charged VAT @ 5% in the aforementioned sale invoice. The details of manufacturing and contention as regards applicable schedule entry as stated in the application and submission dt.27.08.2013 is reproduced verbatim thus -

- *" Business : Manufacture and sale of NWF sling (loop of fabric). Sling as per Oxford dictionary means flexible loop of fabric used to support or raise a hanging weight.*
- *Raw material : Polyester industrial yarn. The process of manufacture comprises of warping, weaving and dyeing. The goods so manufactured are known as narrow woven fabric. These are cut and stitched into various product which are used for lifting, lashing, fish net, cargo net etc.*
- *Uses : For lifting and supporting machinery in Industry.*
- *Entry : As per the applicant-covered by Schedule C Entry 101(b)- "Varieties of textile and textile articles as may be notified from time to time, by the State Government, in the Official Gazette..... rate 5%.*
- *Notification No. VAT-1505/CR-120/Taxation-1, dt.1.6.2005. Sr. No.25. Heading 5911 of Central Excise Tariff, 85. "Textiles products and articles, for technical uses, specified in Note No.7 to the chapter 59 of the CET,85."*
- *Note No.7 : Heading No.5911 applies to the goods which do not fall in any other heading of section XI.*
- *Having regard to the Note No.(2) & (3) appearing below the schedule in the Notification dt.1.6.2005 it is clear that textile products and articles for technical uses specified in notes 7 to the chapter 59 of the Central Excise Tariff Act, 1985, are covered by Heading 5911 and therefore, the N.W.F. Sling sold by applicant under Invoice No-247 dated 12.9.2011 will be covered any entry C-101(b) of the Maharashtra Value Added Tax Act, 2002 and will attract tax at the rate of 5% .*
- *Chapter 59 : Refers to textile fabrics and articles suitable for industrial use.*
- *Goods specified in Note No.7 (a) (iv) : Flat woven textile fabric with multiple warp or weft used in machinery or for other technical purposes.*
- *Exemption : upto first clearance of Rs. one crore.*
- *Thus, it is contended that the applicant's product will be covered by the entry C-101(b) of the MVAT Act attract tax @ 5% . "*

03. HEARING

The case was taken up for hearing on dt.27.08.2013. Shri P.V. Surte, Advocate, attended and submitted that -

1. The application is exhaustive.
2. A written submission dt.27.8.2013 is given which explains the issue at hand.
3. A certificate copy issued by Jindal (the purchaser of the impugned product) stating that the product is used for lifting seamless pipes is given.
4. A declaration given to Central Excise authorities stating that the product is covered under 59.11 - copy thereof is given.

04. OBSERVATIONS

I have gone through the facts of the case. The product put up for determination is a 'Narrow Woven Fabric Sling'. The applicant has contended that the impugned product is used for 'lifting and supporting machinery in Industry'. The applicant has also given a self-declaration by M/s.Jindal Saw Ltd. (the purchaser) confirming (on request from the applicant) therein that the N.W.F Sling (Narrow Woven Fabric Sling) 2ton *2 meter for Rs.297150/- purchased vide Invoice No.247 dt.09.12.2011 were utilized in the plant -Plot NO A-59/60, MIDC Malgaon, Sinnar, Dist-Nashik for 'lifting for their seamless Pipes'. The schedule entry claimed applicable is C-101(b). The entry reads thus :

"Varieties of Textile and Textile Articles; as may be notified from time to time by the State Government in the Official Gazette."

As can be seen, the schedule entry speaks of a notification. This notification is based on the classification under the Central Excise Tariff Act. The applicant has laid claim in respect of the Central Excise Tariff Heading (CETH) 5911 notified for the purposes of this entry. The description against this heading as notified for the purposes of the entry C-101(b) and as appearing under Central Excise reads thus :

Notification 5911	Textile products and articles, for technical use, specified in Note 7 to the Chapter 59 of the Central Excise Tariff Act,1985
Central Excise 5911	Textile products and articles, for technical use, specified in Note 7 to this Chapter

It can be seen from the above that the description under Central Excise is taken in its entirety for the purposes of the notification. What this means is that the entire Heading 5911 would be covered by the notification and thereby under the schedule entry C-101(b). Since both the descriptions are the same, the product if classified under CETH 5911 would be taxed @5% being covered by the notification issued for the purposes of the aforementioned schedule entry.

As can be seen, the schedule entry claimed as being applicable is a referential one to the classification under Central Excise. The invoice submitted by the applicant does not bear any information about classification of the impugned product under Central Excise. Hence, the applicant was asked to furnish the same. The applicant informed that the invoice submitted for determination does not disclose the classification under Central Excise as the applicant is not liable to pay excise duty in view of being covered by the

Exemption Notification under Central Excise. The applicant has given a copy of a self-declaration under the Central Board of Excise and Customs about a manufacturer claiming exemption. The excisable goods 'Slings' is shown against the Heading 59119090 under the column 'Classification under First Schedule to the Central Excise Tariff Act, 1985(5 of 1986) and against the column 'Notification No. and date, availed', the following is mentioned '30/2004CE'.

I would now proceed to ascertain whether the impugned product could be said to be covered by the description, as has been notified, against the Heading 5911 for the purposes of the entry C-101(b). A minute reading of the said description reveals thus :

1. It covers 'Textile products and articles';
2. These 'Textile products and articles' are for technical use;
3. The technical use of these 'Textile products and articles' is as specified in Note 7 to the Chapter 59 of the Central Excise Tariff Act, 1985.

Polyester falls in chapter 54 of the Central Excise Tariff. Chapters 50-63 of the Central Excise Tariff are grouped under the section named as 'Textiles and Textile Articles'. Since the applicant has informed that the product is made from polyester yarn, I have now to ascertain whether the second and third conditions are fulfilled. I proceed thus :

The second condition and the third condition are to be read in unison. The second condition states that the 'Textile products and articles' are for 'technical use' and the third condition states that this 'technical use' is as per Note 7 to Chapter 59 of the Central Excise Tariff Act, 1985. I would reproduce herein the said Note 7 thus :

Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

- (a) textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:
 - (i) textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);
 - (ii) bolting cloth;
 - (iii) straining cloth of a kind used in oil presses or the like, of textile material or of human hair;
 - (iv) flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;
 - (v) textile fabrics reinforced with metal, of a kind used for technical purposes;
 - (vi) cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;
- (b) textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts)

A look at each of the above clauses reveals that the products referred to therein are

to be used in some or the other machines. In clause (b), the words 'technical purposes' are used. To elaborate the meaning thereof, the clause itself gives the examples of products used in machines as machinery parts as in papermaking or similar machines.

The Heading 5911 makes use of the words '*Textile products and articles, for technical use*'. An obvious analogy could be derived from the clause (b) above to infer that 'technical use' would mean use in a machine. Technical uses would mean designed to be incorporated into apparatus needed to accomplish mathematical, engineering, scientific tasks. I find that my aforesaid inferences are supported by the Chapter Note to Heading 5911 under the Harmonized System of Nomenclature Notes. The same reads thus -

'The textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools.'

What the above Note to Chapter 59 means is that the products and articles of Heading 5911 :

- a. are for use in various types of machinery, apparatus, equipment or instruments;
- OR
- b. are tools or parts of tools.

The applicant's attention was specifically invited to the above Note and he was called upon to lead evidence as to the following :

- a. which of the 'technical use' as enumerated above, could the impugned product be put to?
- b. in what type of machinery, apparatus, equipment or instruments, could the impugned product be used?
- c. whether the impugned product is a tool or a part of a tool?

The applicant has failed to lead any evidence. I have, therefore, to proceed with the only available information that the impugned product is used for '*lifting and supporting machinery in Industry*'. The website of the applicant, i.e Ferretero was referred to and the impugned product presented for determination was found described under the category 'Web Slings'. The product is described thus :

"We manufacture Webbing Slings upto 115 tons capacity as per EN 1492 :1 2000 standards and ASME B30.9 standards.

Flat Webbing Lifting Slings are made from high tenacity polyester webbing, colour coded for ease of identification for lifting. They are available in four basic types: Simplex, Duplex, Triplex and Endless.

Simplex Slings are manufactured from single thickness webbing, whereas Duplex slings are manufactured from double thickness webbing and Triplex of Three layers upto 10 layers. All are either terminated in a metal end fitting or, more popularly, sewn back upon themselves with a high tenacity Polyester fabric to form a reinforced Eye, which provides greater durability than the traditional leather eye.

The webbing is stitched close to the eyes which are upto 45 " long bearing to bearing. Endless slings, however, are manufactured from single thickness webbing sewn in a continuous loop with an

overlap. These slings are mainly used when needing a wide grip on large equipment, e.g. for lifting pipes. In order to protect the webbing from unnecessary wear and tear, various sleeveings are available, in any length, which can also protect both the sling and any fragile loads."

The description as above '*sewn back upon themselves with a high tenacity Polyester fabric to form a reinforced Eye*' applies to the impugned product. The use of the product as comes out from the above extract is that *these slings are mainly used when needing a wide grip on large equipment, e.g. for lifting pipes*. It can be deduced that the impugned product has independent use in lifting loads and is not used in any machine as such. It is used for fastening of cargo to ensure ease of lifting. Thus, the impugned product is not used in any type of machinery, apparatus, equipment or instrument. At the most, it could be termed as an accessory of lifting equipments'.

As regards the other criteria of the product being a *tool or a part of tool*, then it could be said that the product is not a tool. A tool is *a device or implement, especially one held in the hand, used to carry out a particular function*. Whereas the impugned product is of the type used for securing cargo while transporting, shifting or storage. A tool is one used for performing mechanical operations whereas the impugned product does not perform any mechanical operation but is used for keeping the goods together while transporting. It is used for lifting and supporting cargo. The impugned product could not be said to be a tool and therefore, not a part of a tool.

I would summarize the above discussion thus -

- i. *The tying or securing together of cargo does not involve any methodology of science.*
- ii. *The use in strapping for lifting is not a mechanical use.*
- iii. *The lifting equipment, as in a crane, is the machine which performs the mechanical operations and not the webbing sling.*
- iv. *Webbing slings facilitate lifting of loads. But the load cannot be lifted unless the eyelets of the sling are attached to a crane. Thus, the webbing sling on its own does not perform any mechanical operation. It facilitates securing cargo from spillage or damage during lifting.*
- v. *The load can be lifted even without this sling. The use of this sling may make the performance of the operation more efficient, but it is not an integral part of the machine or the operation.*
- vi. *The present product does not perform any mechanical operations as it is just used to secure the cargo.*
- vii. *It is not fitted in any machine.*

In view of the above, it could be seen that the impugned product would not satisfy the conditions as laid down by HSN for textile products and articles of the heading 5911. The impugned product is used for material handling work. The impugned product is neither used in any machine nor is it a tool and therefore, would not fall under the

description notified for the purposes of CETH 5911. Herein, I would refer to a decision under the Central Excise Tariff in the case of Wrights Pulls and Lifts v. Commissioner of Customs, Mumbai (2004-174 ELT 252 TRIB) wherein the claim of the appellant to classify the products Polyester Webbing Slings and Polyester Round slings (used for lifting heavy weight cargo) under heading 5911.90 was ruled out.

There is no other description in the notification which covers the impugned products. There is also no other specific entry under which the impugned product could be said to be falling. Therefore, the product would fall in the residuary entry E-1, thereby taxable @12.5%.

05. In the backdrop of the discussion held herein above, it is hereby ordered that -

ORDER

(under section 56(1) (e) of the MVAT Act, 2002)

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

Mumbai, dt. 11/2/2014

It is herewith determined that the rate of tax on the product 'Narrow Woven Fabric Sling' sold through Invoice No.247 dt.09.12.2011 is 12.5%, being covered by the residuary entry E-1 of the MVAT Act,2002.



(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI