

**PROCEEDING OF ADVANCE RULING AUTHORITY UNDER SECTION 55 OF
MHARASHTRA VALUE ADDED TAX ACT, 2002 AND UNDER RULE 63 OF MVAT
RULES, 2005.**

SR. NO	PARTICULARS	DETAILS
1	Name of applicant	<u>DARIL IMPEX PRIVATE LIMITED</u>
2	Address	B/302, MAITRI RESIDENCY, MAHAVIR NAGAR, KANDIVALI WEST, MUMBAI-400067
3	TIN	27100628647V
4	Details of application	ARA No. 176 Dt. 30.07.2019
5	Jurisdictional Assessing Authority	MUM-VAT-D-830, Nodal-3, Mumbai
6	Heard	Mr. Pankaj Seth (Director), Mr. H M Sukhia (CA)
7	E-mail	dipl405@gmail.com
8	Advance Ruling Authority	Mr. C M Kamble (Chairman), A. A. Chahure (Member), V. V. Kulkarni (Member)

ORDER NO- ARA MUMBAI-176/2019-20/ Disp. Reg. No. 14 Dt. - 09.10.2019

(Order under Section 55(5) of MVAT ACT, 2002)

The applicant, M/s. DARIL IMPEX PRIVATE LIMITED, a registered dealer under Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002), has submitted application under Section 55 of MVAT Act, 2002 for determination of rate of tax on "Rubaloy". The list of product is enumerated in tabular format as under.

SR. No.	NAME OF PRODUCT
1	Rubaloy

02. Facts of case: -

2.1 Mr. Pankaj Seth (Director) along with Mr. H M Sukhia (CA) attended and submitted that the applicant is a trader of Rubaloy, an unvulcanised rubber-primary form of rubber. Applicant has effected sales of the said commodity, Rubaloy, with excise heading 40059190 and paid tax @ 5%, considering the said product being covered under Schedule Entry C-54, of the Maharashtra Value



Added Tax, 2002. The said Rubaloy is purchased from manufacturing companies and supplied to various industries like automobiles, fuel and oil industries etc.

2.2 The assessing authority has passed assessment order of the applicant for the period 01.04.2010 to 31.03.2011. In the Assessment Order, the assessing authority decided that the product Rubaloy is not covered under Schedule Entry C-54, of Maharashtra Value Added Tax, 2002, as it is a polymer of PVC and rubber and not an unvulcanised Rubber, as described under excise chapter heading 4005 i.e. "Compounded rubber, unvulcanised in primary forms or in plates, sheets or stripe", as per notification VAT-1505/CR-234/dated 01/09/2005. In view of above, the applicant is seeking advance ruling on the product 'Rubaloy'.

03. Contention of applicant: -

3.1 The applicant has sought determination of rate of tax on sale of products as enumerated below under section 55 of MVAT ACT, 2002.

SR. NO.	NAME OF PRODUCT
1	Rubaloy

3.2 The applicant has relied on

- a. Explanation of manufacturing process submitted by Manufacturer.
- b. Sales Purchase Invoices Issued by Manufacturer.
- c. Assessment order passed under MVAT Act in case of Manufacturer.

04 Analysis and Discussion: -

4.1 The applicant is a trader in product 'Rubaloy'. The applicant is not a manufacturer of the product 'Rubaloy'. The applicant purchases Rubaloy from the manufacturer and sells it in the market. Therefore, being a trader, the applicant has mainly relied on the product information available from the brochures made by the manufacturer of this product. The applicant has submitted the brochures and sample of the said product. The applicant has explained the nature of products and its use on the basis of these brochures. The applicant has also submitted some information of this product, from the manufacturing company, M/s Imperial Waterproofing Industries Pvt. Ltd. Ongoing through the brochures and other information on this product, it is seen that Rubaloy is a polyblend of mainly Acrylonitrile Butadiene Rubber (Nitrile Rubber) and Polyvinyl Chloride (PVC) in various proportions depending upon the grade of the product. In order to plasticize, there are also plasticizers used in this blend depending upon the grade and requirement. The ratio of the Nitrile rubber and/ or plasticizers, classify various Rubaloy Grades. This polyblend are capable of giving finer, stronger materials with unique properties and an improved finish. It has an edge over Nitrile Rubber in ozone resistance, chloroprene in fuel



resistance and cost and oil resistance in the case of EPDM. Products made from Rubaloy have excellent fuel, oil, ozone, solvent and abrasion resistance. The finish is smooth and glossy due to the presence of PVC. Specialty grades offer unique properties such as low temperature resistance, extremely low hardness, fuel 'C' resistance, fire retardancy, anti-static properties and the ability to produce light weight micro-cellular products. Due to its selected formulations and variety of grades, optimum physical and chemical properties can be achieved, along with excellent dimension control on extrudates and moulded products. Rubaloy is packed in 25 kg LDPE bags. The various grades of product as seen from brochures are as follows;

Sr. No.	Grade	Poly Ratio
1	RA-70, RA-7060, RA-7047, RA-703-G, RA-7573, RA-7360, RA-7380, RA-L7360, RA-75, RA-4465, RA-FRLT, RA-73.	70/30
2	RA-6040, RA-6490	60/40
3	NBP 3050	85/15
4	RA-8020	80/20
5	RA-50	50/50
6	RA-S	30/20
7	RA-SS	60/40/70
8	RA-2530	10/10/15

The product Rubaloy has applications in the manufacture of Gasket, oil/ fuel seals, O-rings, grommets, diaphragms, bellows, wind-shield, wipers, automotive seals and profiles, automotive handle grips, automotive mats, automotive weather strips, automotive hoses, microcellular sheets for insulation, cable sheathings, rice rollers, low and hard hardness printing rollers, industrial hoses, fuel-C and fuel-D resistant hoses, LPG hoses and tubes , air intake hoses, safety shoe soles, conveyer belt covers, anti-static floor coverings, rubber flooring and tiles, chemical and sea water resistance sheets, CNG and LPG rubber parts and low temperature resistant products.

4.2 The applicant has submitted manufacturing process from the manufacturer of this product, M/s Imperial Waterproofing Industries Pvt. Ltd., as follows;

Rubaloy is a blend of mainly Nitrile Rubber and PVC. In order to plasticize, there are also Plasticizers used in the blend depending upon grades. The main ingredient is NBR. The ratio of NBR, PVC and other plasticizers will classify various Rubaloy grades. As per the formulations of the various ingredients viz. Nitrile Rubber, PVC, DOP/ DINP (plasticizer), smaller quantities of stabilizers, secondary stabilizers, anti ozonent, anti-oxidants, etc., as additives are blended in a rubber internal mixer at a particular temperature and pressure and time depending upon the



grades of the product. The kneaded mixed material is dumped on open rubber mixing mill, sheeted and cooled and dried in a rubber batch off unit. These sheets are cut and packed for sale.

4.3 The applicant has submitted the assessment order in case of M/S Imperial Waterproofing Industries Pvt. Ltd passed by Assistant Commissioner –VAT-D—701 under section 23(2) of MVAT Act,2002 for financial year 2008-2009 as well as tax invoices issued by the said manufacturer.

4.4 On this background, it would be worthwhile to have a closer look at the statutory provisions under the MVAT Act, 2002 and relevant schedule entry under the Act. We have perused the submission and considered the arguments advanced by the learned Chartered Accountant. Crux of the matter is whether the impugned product is covered by the notification of industrial inputs issued under Schedule entry C-54 or otherwise.

The Schedule entry- C-54 reads as under.

“C-54 - Industrial inputs and packing materials as may be notified from time to time by the State Government in Official Gazette”.

In pursuance to this schedule entry, the State government has issued the notification vide no. VAT-1505/CR-234/Taxation-1, on September 1, 2005. It is necessary to analyse the said notification to see whether the impugned product Rubaloy is covered by the said notification or otherwise. The notification is as below;

“In exercise of the powers conferred by entry 54 in schedule 'C' appended to the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005) and in supersession of Government Notification, “finance Department, No. VAT-1505/ CR-115/ Taxation-1, dated the 18t April 2005, the Government of Maharashtra hereby, with effect from 1st September 2005, specifies the following goods, more particularly described in the Schedule appended hereto, to be industrial inputs and packing materials, whether sold under a generic name or any brand name or otherwise, for the purposes of the said entry,

The Industrial inputs and packing materials covered from time to time, under the headings or sub-headings or as the case may be, tariff items listed below of the Central Excise Tariff Act, 1985 (5 of 1986).

Sr. No.	Heading No.	Sub-Heading No.	Tariff Item No.	Description of goods
209.	4005	-	-	Compounded rubber, unvulcanised, in primary forms or



				in plates, sheets or strips".

The applicant's product "Rubaloy" is a registered trade/ brand name of the product, by its manufacturer, M/s Imperial Waterproofing Industries Pvt. Ltd. The applicant contended that, the impugned product Rubaloy is covered under Excise Schedule entry- 40059190. Therefore, to ascertain, whether the of impugned product is covered under the description of goods under Heading No. 4005, the note appended to the notification is referred. The note (2) and (3) is as follows;

"Note-

(1)

(2) Where any commodities are described against any heading or, as the case may be, sub-heading, and the aforesaid description is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then only those commodities described as aforesaid will be covered by the scope of this notification and other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.

(3) Subject to Note 2, for the purpose of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purposes of the said tariff under that heading or sub-heading will be covered by the scope of this notification.

(4)"

On analysis of notification, tariff heading and notes, it is observed that, Note-3 appended to the notification states that if the description in the Notification matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered by the tariff will be covered by the scope of the notification. Thus, applicant needs to prove that the impugned product is covered by the Heading 4005. The applicant's product Rubaloy is mixture/ polyblend of Acrylonitrile Butadiene Rubber (Nitrile Rubber) and Polyvinyl Chloride (PVC). The description of the impugned product and description as per notification does not match Therefore, the applicant was informed at the time of hearing on 20/09/2019 and 14/10/2019 to submit necessary explanation and documentary evidence. However, applicant did not produce relevant documents and proper evidence to conclude the issue. The classification of goods and the rate of tax thereon is to be decided by considering the factual and various aspects. In absence of relevant documents, the classification of impugned product and rate of tax thereon cannot be



decided. Hence, this authority considers that it would not be appropriate to give any ruling, which would result in miscarriage of justice. Thus, the application filed by the applicant is disposed.




A.A. Chahure
(MEMBER)


V. V. Kulkarni
(MEMBER)


C.M. Kamble
(CHAIRMAN)

Note: If the applicant is aggrieved by this order then Appeal may be filed before the MSTT, Mumbai within the prescribed time (Thirty days) as provided in the relevant Section of the Act.

ORDER NO- ARA MUMBAI-176/2019-20/ Disp. Reg. No. 14 Dt. - 07/12/2019

Copy to:

1. Applicant
2. Commissioner of Sales Tax, Maharashtra State, Mumbai
3. Joint Commissioner of State Tax, Nodal 3, Mumbai
4. Joint Commissioner of State Tax, Investigation Branch-B, Mumbai