

Read : Application dt.28.10.2010 received on dt.16.04.2012 from M/s. Amcor Rigid Plastics India Pvt. Ltd., holder of TIN 27030000756V/C.

Heard: Sh. Prakash Shah, Chartered Accountant and Sh. Shekhar Bongarge, Finance Executive.

PROCEEDING

(under section 56(1)(e) and 56(2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2012/Adm-6/10/B- 5

Mumbai, dt. 30/3/2016

The applicant, M/s. Amcor Rigid Plastics India Pvt. Ltd. (the applicant), situated at GAT No. 119-123, Dhanore Village, Alandi-Markal Road, Tal: Khed, Dist: Pune-412 105, requests determination of the rate of tax on the product pet preforms sold under invoice no.09407 dt.02.04.2012 under the description "27 GM CLEAR PREFORM" by posing a question thus :

"Whether "PET Preforms" covered under chapter Heading 3923 30 90 of the Central Excise Tariff Act, are covered under entry 54 of Schedule C and liable to be taxed at 5%?"

02. FACTS AS PER THE APPLICANT

The Statement of facts and Annexure-I is reproduced verbatim thus :

"Amcor Rigid Plastics India Pvt. Ltd. (hereinafter referred to as company) is a company registered under MVAT and CST Act. TIN Nos. are 27030000756V and 27030000756C respectively.

- 1. Company is engaged in manufacturing of PET Preforms. It also undertakes conversion of resin into PET Preforms. Pet Preforms is a product which is used to blow mould bottles for packing of liquids such as soft drinks, water, oil etc.*
 - 2. The company, earlier, was under bonafide impression that PET Preforms were covered under Ch Heading 3926 90 99. The company, however, now is of considered opinion that PET Preforms, more appropriately get covered under Ch Heading 39233090 of the Central Excise Tariff Act, 1985. The company was levying tax @12.5% as the earlier CH heading was not covered under Entry 54 of Sch C. In view of the proposed change, the company now has started levying tax @5%.*
 - 3. It is noticed that PET Preforms manufactured by other dealers are rightly classified under Ch Heading 3923 30 90 and offered to tax @ 5% under MVAT Act 2002. Details and other documents can be submitted at the time of hearing.*
 - 4. PET Preforms are covered under Entry No 54 of Schedule C appended to the MVAT Act 2002. It is also covered under Noti. No VAT-1505/CR-234/Taxation 1 at Sr No 203. It is thus liable to be taxed @ 5%.*
 - 5. The company has raised an Invoice No 9407 Dt. 02.04.2012 in favour of Hi tech International, Pune. VAT is charged @5%. Copy of this invoice is enclosed for your perusal.*
 - 6. An online application seeking change in the chapter heading is filed with the Central Excise Department. Acknowledgement of this application is enclosed. Copy of amended certificate will be produced before you shortly.*
- Description of goods as per Ch Heading 3923 is identical with entry no 203 in the notification referred above. In view of note no 3 and note no 4 for interpretation, appended to the notification of Industrial inputs and packing material, PET Preforms are squarely covered under this notification and liable to be taxed @5%."*

ANNEXURE-I - PREFORM MANUFACTURING PROCESS

- 1. Polyethylene Terephthalate (PET) resin from big LDPE bag or silo is charged to hopper drier with vacuum loader.*
- 2. PET resin is dried in the hopper for six to eight hours at 180 Deg C.*
- 3. The dried resin is fed to the injection machine in which it is melted and injected into the mould.*
- 4. The mould is cooled with chilled water and the manufactured preforms are dropped on the conveyor.*
- 5. The conveyor finally drops the preforms in corrugated LDPE lined boxes which are kept on weighing machine.*
- 6. After the pre-determined quantity is filled in the box, it is closed, sealed, labelled and shifted to warehouse.*
- 7. The preforms which are used for hot-fill applications e.g. fruit juices, are further processed in the crystalliser machine where the neck portion of the preform is heated to crystallisation temperature and then cooled to get required finished dimensions. After neck crystallization the bottle made from such*

perform can withstand higher temperature during filling of hot juices without any deformation in the neck area.”

03. HEARING

The case was taken up for hearing on various dates since 2015. However, the hearing finally took place on dt.17.02.2016 when Sh. Prakash Shah, Chartered Accountant and Sh. Shekhar Bongarge, Finance Executive attended. The proceedings during the hearing are thus :

- It was submitted that the impugned product is known as ‘Pet Preforms’ and are commonly referred as ‘plastic moulded tubes’.
- It was claimed that the same is covered by the Excise Heading 3923 3090. It is contended that the product is covered by the notification No.VAT-1505/CR-234/Taxation-1 at sr. no.203 under schedule entry C-54.
- It was submitted that
 - The Pet Preforms are used by the bottle manufacturing companies as raw material for the production of their finished products like plastic bottles, jars, etc. These are also used by beverage manufacture companies for packing. These Pet Preforms are customer specific and cannot be sold to end users or loosely in the market. They are not meant for end consumption.
- The applicant has collected and paid tax @12.5% on the product till March 2012. After the said date, the applicant has been charging tax @5%. The applicant does not dispute the tax which has been collected @ 12.5% if the impugned products are held as falling in the 4%/5% tax slab. The applicant is of the opinion that the product falls in the heading 39233090 and therefore, taxable @ 5%.
- The applicant has requested for prospective effect if the contention is not accepted.

The submission tendered during hearing is reproduced verbatim thus :

- 1) “Copy of the Central Excise Registration for your record and perusal.
- 2) Copies of the invoices of competitive vendors, where it is noticed that PET Preforms manufactured by other dealers rightly classifying the product under Chapter Heading 3923 30 90 and offered to Tax @5% under MVAT Act, 2002.
- 3) The product PET Preform is also known as Plastic Moulded tubes. By application of pressure, these tubes are subsequently converted into bottles used for container of drinking water, aerated water, soft drinks, beverages, and various allied products. The word “PET” means Polythylene Terephthalate and ‘Preform’ means “before formation or before in hand. Polythylene Terephthalate (PET) is a condensation polymer produced before purified Terephthalic Acid and mono ethylene glycol by a continuous melt phase of polymerization process followed by solid state polymerization using Dupont Technology. The PET Resin is converted into ‘PET Preform’ through injection moulding process where in neck and incomplete body if formed, which is the finished product of application. The ‘PET Preform’ is the finished product of the dealer and this finished product is utilized by other dealers for manufacturing pet bottles or jars or other plastic container or goods.
From the above, it manifests that the finished product of the dealer is an industrial input for other dealers because this good is utilized as raw material for production of their finished products like plastic bottle, jar or other plastic container or plastic goods.
Further, these PET Preforms are not sold loosely in the market. The PET Preform is customer specific and is differentiated based on the weight of the PET. Also the PET Preforms cannot be sold in the open market otherwise there will be breach of contract and legal action will be taken against the dealer company.
- 4) We have also relied on the following DDQ
Published on Sales Tax Practitioners’ Association of Maharashtra
Query No:33
What is the rate of tax applicable on the sale of PET Preform?
Held: PET Preforms are taxable at 4% and fall under entry C-1-29
- 5) As per HSN Code No. 3923:-
 - (i) Under the Central Excise & Customs Tariff:-
Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
 - (ii) PET Preforms are covered under Entry No. 54 of Schedule C appended to the MVAT Act 2002. It is also covered under Notification No. VAT-1505/CR-234/Taxation-1 at Sr. No. 203 (HSN Code 3923). The excise heading 3923 as notified for the purpose of MVAT Act is reproduced below:-



3923	Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures, of plastics but not including- (a) insulated wares (b) carry bags that is to say bags of the type which are used for packing of goods at the time of sale for the convenience of the customer.
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Excise heading 3923 as per the Central Excise Tariff Act is as under:-

3923	Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures, of plastics but not including- (a) insulated wares (b) carry bags that is to say bags of the type which are used for packing of goods at the time of sale for the convenience of the customer.
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It is seen from the above that the description given under the heading notified for the purpose of the MVAT Act matches with the description given under the Central Excise Tariff Act with only one exception.

The product PET Preforms is not covered under the description "insulated ware" nor is it a "carry bag". Hence, the dealer hereby pleads that it is covered by the original heading 3923 and there shall not be any dispute about the fact that it is also covered by the heading 3923 as notified under the MVAT Act.

(iii) Some entries in the schedules of VAT rates appended to the Maharashtra Value Added Tax Act, 2002 contain HSN codes against the item mentioned therein. It is general understanding that these HSN codes are interpreted in different sections at times. In order to clear any doubt regarding the interpretation of entries containing HSN codes, it is intended to clarify that where a four, six or eight digit code is mentioned in the schedule, it would cover all items falling under the code unless there is any specific exclusion prescribed for the same in the said Act.

(iv) The dealer is of considered opinion that PET Preforms, more appropriately get covered under CH Heading 39233090 of the Central Excise Tariff Act, 1985:

In view of the above interpretation and facts, appended to the notification of industrial inputs and packing material, PET Preforms are squarely covered under the Notification No. VAT-1505/CR-234/Taxation 1 at Sr. No. 203 and liable to tax @ 5%."

A further submission of dt.NIL (received on dt.22.02.2016) is reproduced verbatim thus :

"1. The product PET PREFORM which are manufactured by us and supplies to various industries is covered and identified as the Industrial inputs as per Notification No. VAT-1505/CR-234/Taxation 1 at Sr.No. 203 for the purpose of entry 54 Sch C of the schedule, appended to MVAT Act and also covered in excise heading 39.23 which reads as under:-

"39-23 - Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures, of plastics but not including

(a) insulated wares

(b) bags of the type which are used for packing of goods at the time of a sale for the convenience of the customer including carry bags"

Also Explanatory Notes relating to harmonious commodity coding system issued by the World Customs Organisation, established Customs Co-operation Council. This explanatory note reads as under:-

3923.10 - Boxes, cases, crates and similar article - Sacks and bags (including cones)

3923.21 - Of polymers of ethylene

3923.22 - Of other plastics

3923.30 - Carboys, bottles flasks and similar articles.

3923.40 - Spools, cops, bobbin and similar supports

3923.50 - Stoppers, lids, caps and other closures

3923.90 - other

This heading covers all articles of plastics commodity used for the packing or conveyance of all kinds of products. The articles covered include

(a) Containers such as boxes, cases, crates, sacks and bags (including cones and refuse sacks) Casks, cans, carboys, bottles and flasks

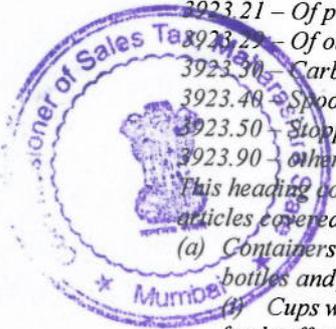
(b) Cups without handles having the character of containers used for, the for the packing or conveyance of certain foodstuffs whether or not they have secondary use as tableware or toilet articles.

(ii) Bottles preform of plastic being intermediate products having tubular shape, with one closed end and one open end. Treated to secure a screw type closure the portion below the traded end being intended to be expanded to a desired size and shape.

(b) Spools, cops, bobbins and similar support, including video or audio cassettes without magnetic tape.

(c) Stoppers, leads "aps and other closures".

We invite your attention, specifically clause (ii) wherein bottles preform are specifically mentioned.



The pet preform are not end-products intended for final consumption. Hence the pet-preforms are covered by invoice No. 9407 dt. 9-04-2012 fall under entry No.54 of Schedule C appended to the MVAT Act, 2002 and according eligible to tax at 5%.
Accordingly our application may please be consider favourably on the basis of facts and material put forth before you.”

The applicant has enclosed with the aforesaid submission, a copy of the following :

1. Determination order in the case of M/s.Sheth Pet & Polymers P. Ltd. passed by the Additional Commissioner of Sales Tax, Bombay Sales Tax Act, Mumbai (No. Addl. CST/BST Act/DDQ/Adm-29/421303/S/197/60/08-:09/B- 262 dt. 6-09-2008) wherein pet preforms were covered by the schedule entry for Industrial Inputs under the Bombay Sales Tax Act,1959.
2. Advance Ruling order dt.08.02.2012 passed by the Orissa Sales Tax Tribunal (Full Bench), Cuttack, in the case of M/s. Kalinga Gases Pvt. Ltd. wherein pet preforms were covered by the schedule entry for Industrial Inputs under the Orissa Value Added Tax Act,2004.
3. Statement showing the sale of Pet Preforms to their customers and the use to which the pet preforms are put to by the customers thus :

Particulars	Grammage	Customer Name	Purpose is used to make bottle for
53 Gm Preforms	0.05300	HINDUSTAN COCA COLA BEV.PVT.LTD.	Fruit juice
53 Gm Preforms	0.05300	HI TECH INTERNATIONAL	Fruit juice
53 Gm Preforms	0.05300	BRINDAVAN BEVERAGE LTD.	Fruit Juice
13.6 gm preforms	0.01366	MOTHER DAIRY (UNIT OF G.C.M.M.F.LTD)	Milk Bottle
25.1 gm Clear/Green preforms	0.02510	HINDUSTAN COCA COLA BEV.PVT.LTD.	Sprite /coca cola
31.2 gm Clear/Green preforms	0.03120	HINDUSTAN COCA COLA BEV.PVT.LTD.	Sprite /coca cola
46.74 gm Clear/ Emerald Preform	0.04674	SRI SARVARAYA SUGARS LTD.	Sprite /coca cola
46.74 gm Clear/ Emerald Preform	0.04674	SUPERIOR DRINKS PVT.LIMITED	Sprite /coca cola
46.74 gm Clear/ Emerald Preform	0.04674	UDAYPUR BEVERAGES LTD.	Sprite /coca cola
46.74 Amber Preform	0.04674	SABMILLER INDIA LIMITED	Beer
37.45gm Clear/Green Preform	0.03745	HINDUSTAN COCA COLA BEV.PVT.LTD.	Sprite /coca cola
29.85gm Clear/Green Preform	0.02985	HINDUSTAN COCA COLA BEV.PVT.LTD.	Sprite /coca cola
20.75G Preform	0.02075	HINDUSTAN COCA COLA BEV.PVT.LTD.	Mineral Water Kinley
52.7 - Clear/Green preform	0.05270	PARLE INTERNATIONAL PVT.LTD.	Sprite /coca cola
52.7 - Clear/Green preform	0.05270	HINDUSTAN COCA COLA BEV.PVT.LTD.	Sprite /coca cola

04. OBSERVATIONS

I have gone through the facts of the case. The product for determination is “Pet Preforms”. The word PET means *polyethylene terephthalate*. Hawley’s Condensed Chemical Dictionary defines polyethylene terephthalate as a thermoplastic polyester. One of the uses of PET as stated therein is for soft-drink bottles. The Internet reveals that it is extruded or molded into plastic bottles and containers for packaging foods and beverages, personal care products, and many other consumer products. The pet preforms resemble a test tube, with the bottle-cap threads already molded into place. The applicant informs that the PET Resin is converted into ‘PET Preform’ through injection moulding process wherein neck and incomplete body is formed, which is the finished product of the applicant. It is further informed that this finished product is utilized by other dealers as raw material for manufacturing their finished products like pet bottles or jars or other plastic container or goods. It is also informed that the impugned product is used by beverage manufacturing companies for packing.

It is contended that the impugned product is covered by schedule entry C-54 of the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002). The said entry reads thus -

Industrial inputs and packing materials as may be notified, from time to time, by the State Government in the Official Gazette.

It can be seen that the entry speaks of a notification which enlists the products to be falling in this entry. Thus, it is not the case that all goods which are industrial inputs stand covered by the entry. Therefore, only those goods which have been specified in the notification fall in the entry. The notification makes a reference to the Central Excise Tariff. It should be noted that what matters is the description which has been notified against any Heading which has been included in the notification. If the description against a particular Heading or sub-heading resembles in toto with the description as appearing against the said Heading or sub-heading under the Central Excise Tariff then the entire Heading or sub-heading would fall in the notification and thereby, the entry. However, if the description as notified does not match with the description under Central Excise Tariff then only those products as are covered by the description as has been notified would be covered by the entry. In the instant case, the applicant has informed that earlier the goods were being cleared under the Tariff Heading 3926 90 99. Later on, the applicant started clearing the impugned goods are cleared under the Tariff Heading applicable is 39233090. The Heading 3926 is for 'Other articles of plastics and articles of other materials of headings 3901 to 3914'. The Heading 3923 is for 'Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics'. The applicant has made a reference to the Harmonized Commodity Description and Coding System Explanatory Notes (HSN) to invite my attention to the mention therein about preforms being covered by Heading 3923 and not 3926. I would refer to the HSN Notes to heading 3923 thus :

"This heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products. The articles covered include:

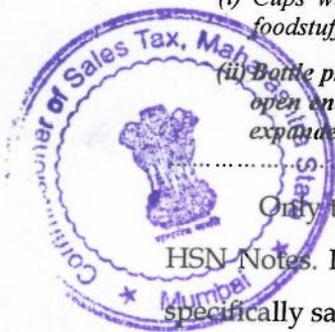
- (a) Containers such as boxes, cases, crates, sacks and bags (including cones and refuse sacks), casks, cans, carboys, bottles and flasks.

The heading also covers:

- (i) Cups without handles having the character of containers used for the packing or conveyance of certain foodstuffs, whether or not they have a secondary use as tableware or toilet articles;

- (ii) **Bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.**

Only the portion relevant to the issue at hand has been reproduced by me above from the HSN Notes. It can be seen that in the point which covers containers such as bottles, the Notes specifically say that the Heading also covers bottle preforms of plastics. At this juncture, it should be noted that the Heading 3923 covers only preforms of bottle preforms. The present product is a preform made of polyethylene terephthalate which is the most common thermoplastic polymer resin of the polyester family. The Wikipedia enlists polyethylene terephthalate under the category 'Common plastics'. The TABLE showing the use to which the applicant's products are put to use shows that the impugned products are used for beverages, water, fruit juices, milk. The sale bill given for determination shows sale to HI TECH INTERNATIONAL which as per the Table makes use of the impugned product for fruit juices.



This exercise is needed as the HSN Notes clearly state that the Heading 3923 covers 'bottle preforms'. Therefore, preforms for products other than 'bottles' would not be covered by the Heading 3923. In the instant case, the following conditions stand fulfilled in respect of the impugned products :

- It is a preform.
- It is a bottle preform.
- It is a bottle preforms of plastics

The HSN Notes having confirmed that bottle preforms of plastics fall in Heading 3923, the earlier clearance under Heading 3926 need not be ascertained for its correctness. I find that the Tariff Heading of 3923 has been specified in the notification. I would now refer to the description under the notification dt.01.09.2005 against the aforesaid Heading thus :

3923	<i>Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures, of plastics but not including-</i> (a) <i>insulated wares</i> (b) <i>carry bags that is to say bags of the type which are used for packing of goods at the time of sale for the convenience of the customer.</i>
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The description under Central Excise in respect of the Heading 3923 (notification is of 2005, hence Excise Tariff of 2005-06 is considered) could be seen thus :

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other Closures, of plastics
3923 10	- <i>Boxes, cases, crates and similar articles :</i>
3923 10 10	--- Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles
3923 10 20	--- Watch-box, jewellery box and similar containers of plastics
3923 10 30	--- Insulated ware
3923 10 40	--- Packing for accommodating connectors
3923 10 90	--- Other
	- <i>Sacks and bags (including cones) :</i>
3923 21 00	-- Of polymers of ethylene
3923 29	-- <i>Of other plastics :</i>
3923 29 10	--- Of poly (vinyl chloride)
3923 29 90	--- Other
3923 30	- <i>Carboys, bottles, flasks and similar articles :</i>
3923 30 10	--- Insulated ware
3923 30 90	--- Other

The description against the present Tariff Heading of 3923 is also the same. Now, it can be seen that the description against the Tariff Heading 3923 as has been notified for the purposes of the MVAT Act, 2002 is the same as the description against the said Tariff Heading under Central Excise with the exception that the notification description excludes insulated ware and carry bags.

The impugned product is being cleared under the Tariff Heading 3923 30 90 which is for 'Other'. The impugned product is neither insulated ware nor carry bag. Therefore, the impugned products which are bottle preforms stand covered by the notification and thereby, the schedule entry C-54 of the MVAT Act, 2002.

I would hasten to add herein that if the applicant is manufacturing preforms of products other than 'bottles' then the same would not stand covered by the Heading 3923. Also, there being no description under the impugned notification which would cover preforms of other products,

such preforms would not stand covered by the schedule entry C-54. Neither is there any specific schedule entry for preforms of other products which would result in such preforms of other products being placed in the residuary schedule entry E-1 of the MVAT Act,2002.

The present determination being in respect of bottle preforms of plastics, the same stand covered by the schedule entry C-54 of the MVAT Act,2002, thereby taxable @5%. The applicant has informed that tax has been collected @12.5% on the sale of the impugned products. Hence, it is determined that the products would be taxable @12.5% for such period when there is tax collection @12.5%. In view thereof, the present determination would be applicable for such transactions wherein tax has not been collected separately.

05. In the circumstances, it is determined thus -

ORDER

(under section 56(1) (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2012/Adm-6/10/B- 5

Mumbai, dt. 30/3/2016



1. The product 'PET Preform' as sold under invoice no.09407 dt.02.04.2012 under the description "27 GM CLEAR PREFORM" falls in schedule entry C-54 of the Maharashtra Value Added Tax Act, 2002, thereby taxable @5%.
2. The applicant has collected tax @12.5% on the sales of the impugned product upto a certain period. This determination order would, therefore, be applicable for and from such transactions wherein tax has not been collected @12.5%.

(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI