

Read : Application dt.10.8.2006 by M/s.Reliable Dyes and Chemicals International.

Heard : Shri Mahabirprasad Deora, Sales Tax Practitioner on behalf of the applicant.

PROCEEDINGS

(Under section-56 of Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2006/Adm-5/58/B-05

Mumbai, dt. 30.04.2007

M/s.Reliable Dyes and Chemicals International, a Proprietary firm is a dealer in varieties of Cross Link Foam produced by various manufacturers and in respect of sale of one such variety, viz., 'Armcore XL Sheet Black', evidenced by tax invoice No.008 dt.29.6.2006, they have desired determination as to the classification and rate of tax applicable on it.

The applicants have contended that the impugned goods are regularly used exclusively for packing of goods and therefore, it would be squarely covered by Sr.No.164 notifying excise sub-heading 39.23 for the purpose of schedule entry C-54 meant for industrial inputs and packing materials. In response to this office communication dt.20.3.2007, the applicant responded through their letter dt.28.3.2007, reiterating their view that the impugned goods are normally used for packing of handicrafts or refrigerated materials and even air-conditioning machines to prevent the damage to goods packed.

The applicants also stated that the ratio of DDQ No.10-2004/Adm-5/ 85 / B-1 dt.1.1.2005 in the case of M/s.Sharp Batteries & Allied Industries Ltd. supports the issue placed in as much it was held that the items which are not covered under exclusion clause are covered under the notification issued for the purpose of industrial inputs and packing materials. As an evidence of classification of the impugned goods under the sub-heading 39.23, they have furnished a photocopy

of tax invoice No.0397 dt.29.7.2006 issued by their suppliers, namely, M/s.Kombyne Transpak Pvt. Ltd. wherein 'Cross Link Foam 5 mm block' are shown to have been cleared under excise tariff item code No.3923.90.90. A sample of the product too has been furnished alongwith the application. Finally, they have put forth a request for prospective effect in case the issue is decided otherwise.

The case was fixed for hearing on 10.4.2007 when Shri M.P.Deora, Sales Tax Practitioner attended on behalf of the applicants. Shri Deora, STP reiterated the contentions made in writing earlier and stated that the impugned goods would be taxable @ 4% being an industrial input covered by entry C-54 of MVAT Act, 2002.

After giving a due consideration to the contentions made, the evidence furnished and the schedule entry C-54 appended to MVAT Act, 2002 alongwith notification issued for the purpose of it, I feel it convenient to reproduce the schedule entry C-54 under the MVAT Act, 2002 and the excise tariff heading as appearing under the CET Act as well as Sr.No.164 in notifying sub-heading 39.23. These are as under,-

(a) SCHEDULE ENTRY C-54 (MVAT Act, 2002):

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

(b) HEADING 3923 UNDER THE CET ACT, 1985 :

"Heading sub-heading Tariff item

3923	--	--	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
--	3923.90	--	Other
--	--	3923.90.10	Insulated ware
--	--	3923.90.20	Aseptic bags
--	--	3923.90.90	Other"

Sr.No.164 and 203 in Notifications dt.1.4.2005 and 1.9.2005 :

Sr.No.	Heading No.	Sub-heading No.	Tariff Item No.	Description of goods	W.e.f.
164	39.23	--	--	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics but not include,- (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.	1.4.2005 to 31.8.2005
203	39.23	--	--	- Do -	1.9.2005

On comparison between the excise sub-heading and the notification for schedule entry C-54 of MVAT Act, 2002 and also the rule of interpretation to the notification to the schedule entry C-54, it could be observed that while adapting the sub-heading, barring the insulatedware and carry bags of the nature given for convenience of customer, all the articles of conveyance and packing get covered under Sr.No.164 till 31.8.2005 and 203 from 1.9.2005 onwards. Since the issue in the instant case is confined to goods used for packing only and further considering the fact that the impugned goods are shown to have been cleared under excise tariff item No.3923.90.90 and are not excluded by the exclusion clause of notification at Sr.Nos.164 and 203, as the case may be, for excise tariff 39.23, the same gets covered by the notification by virtue of the rules of interpretation appended to the notification.

In a somewhat similar case, while interpreting the excise tariff 39.23 to the notification for industrial input in the earlier BST Act, the then Commissioner, in the case of M/s.Sharp Batteries & Allied Industries Ltd. (DDQ No.10-2004/ Adm-5/ 85 / B-1 dt.1.1.2005), had observed that since the product is not specifically excluded from the exclusion clause of excise tariff 39.23 appended to the notification of industrial input, it gets covered by the notification of industrial input. This fact can be further corroborated by the applicants' contention that the product is used for packing of goods as mentioned in the earlier part of the order. In the circumstances, there remains no ambiguity but to accede to the applicant's contention and hence the following order.

ORDER

No.DDQ-11/2006/Adm-5/58/B-05

Mumbai, dt. 30.04.2007

In view of the discussion above, I hold that the sale of 'Armcore XL Sheet Black' evidenced by tax invoice No.008 dt.29.6.2006 would be a 'packing material' for the purpose of Sr.No.164 and Sr.No.203, as the case may be, in notification issued for the purpose of schedule entry C-54 and would be taxable @ 4%.

(B.C.KHATUA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.