

- Read :- 1. Application dated 12th April, 2006 from Shri Mahabirprasad S. Deora, STP on behalf of his client, M/s The Century Textiles & Industries Ltd. (Textile Division).
2. Determination order No.DDQ-11/2005/Adm-5/20/B-5, Mumbai, dt. 27/3/2006 passed in the case of M/s The Century Textiles & Industries Ltd.
- Heard :- Shri Mahavirprasad Deora, S.T.P.

PROCEEDINGS

(Under Section 24 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2005/Adm-5/20/B-01

Mumbai,dt. 3.3.2007

An application is received from Shri Mahabirprasad S. Deora, STP on behalf of his client, M/s The Century Textiles & Industries Ltd. (Textile Division) requesting rectification of the determination order dt. 27/3/2006 passed in his client's case.

02. HISTORY OF THE CASE

The question for determination in the above mentioned determination order was the rate of tax applicable to the product "**Dyed Terry Towel**" sold vide Invoice No. 66 dated 5-5-2005. It was held as follows:-

"The question posed for determination as regards the rate of tax on "towels" is herein answered as covered by Schedule Entry A-51 (vii) of the Maharashtra Value Added Tax Act, 2002 thereby attracting tax @ NIL.

However, considering the fact that the Schedule entry under which the impugned goods are herein determined to be covered being effective for a limited period only, I restrict the effect of this determination order to the period covered by the entry. I hereby order that this determination would be valid for the period 1.5.2005 to 31.3.2006 only.

For the period from 1.4.2005 to 30.4.2005, the applicant may avail of administrative relief on fulfillment of conditions as laid out in the Circular No. 34T of 2005 [No. VAT-2005/Act/VD-1/Adm-3 Mumbai,dt. 26.10.2005]. As things stand today unless otherwise notified, for the period from 1.4.2006 onwards, the goods would be covered by Schedule Entry E-1 attracting tax @ 12.5 % . "

In **para 06.**, on page 4 in point no. [2], it was observed that, for the period 1/4/05 to 30/4/05, 'towels' would be covered by the schedule entry E-1 thereby attracting tax @ 12.5%. As regards this observation, the applicant submits that, for

the period 1/4/05 to 30/4/05, 'towels' would be covered by the schedule entry C-81, thereby attracting tax @ 4%. It is the applicant's submission that, 'towels' would be covered by the Sr. no. 5 of the notification dt. 1/4/2005 issued for the purposes of the schedule entry C-81. Hence, the applicant requests for rectification of the Determination order dt. 27/3/2006.

03. OBSERVATIONS

The product of the applicant is "Terry Towel". The determination order was passed in the applicant's case wherein it was held as follows :-

E-1	1/4/2005 to 30/4/2005	12.5%
A-51(vii)	1/5/2005 to 31/3/2006	Nil%
E-1	1/4/2006 onwards	12.5% - Till the dt. of the order i.e 27/3/06

There being a specific entry (A-51(vii)) for the product 'towels', the possibility of coverage of the product under any other entry remained to be considered in the determination order dt. 27/3/2006.

The applicant has now pointed that 'towels' would be covered by the notification dt. 1/4/2005 issued for the purposes of the schedule entry C-81. Hence, let me reproduce the said entries as well as the relevant portion of the notifications issued for the purposes of the schedule entry :-

SCHEDULE ENTRIES

C-51	1 st May, 2005 to 31 st March, 2006	<i>During the period from 1st May,2005 to 31st March,2006 (vii) Towels</i>
	1 st May, 2006 to 30 th September,2006	<i>During the period from 1st May, 2006 to 30th September,2006 (vii) Towels</i>
	1 st October, 2006 to 31 st March, 2007	<i>During the period from 1st October, 2006 to 31st March, 2007 (vii) Towels</i>
C-81	1/4/2005 to 30/4/2005	<i>Readymade garments and other articles of personal wear, clothing accessories made up textile articles and sets as may be notified from time to time by the State Govt. in the Official Gazette.</i>
	1/5/2005 onwards	<i>(a) Readymade garments (b) Other articles of personal wear, clothing accessories, made up textile articles and sets as may be notified, from time to time, by the State Govt. in the Official Gazette.</i>

NOTIFICATION- C-81- DT. 1/4/2005

W.E.F DT. 1/4/2005

5	63.04	<i>Other furnishing articles, excluding those of Heading No. 94.04 of Chapter 94 of the Central Excise Tariff Act, 1985.</i>
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NOTIFICATION-C-81-DT. 1/6/2005

W.E.F DT. 1/6/2005

13	6304	<i>Other furnishing articles, excluding Towels and articles of Heading No. 9404.</i>
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The word 'Towels' was again included in the notification for the purposes of the schedule entry C-81/C-81(b) by the notification dt. 27/4/2006. However, the said inclusion was made effective from dt. 1/10/2006. The said inclusion was again made effective from dt. 1/4/2007 instead of dt. 1/10/2006 by the notification dt. 30/9/2006.

[A] 1/4/2005 to 30/4/2005

The schedule entry (A-51(vii)) was not in existence during this period. Hence, the product cannot be said to be covered by the said entry. Thus, the determination order is correct as regards the observations that, the product is not covered by the schedule entry A-51(viii) during the period 1/4/2005 to 30/4/2005.

However, it was observed in the said determination that in absence of a specific entry, the product would be covered by the residuary entry E-1 thereby attracting tax @ 12.5%. Now the applicant has brought to my notice that, the product during the period 1/4/2005 to 30/4/2005 would be covered by the schedule entry C-81 of the Maharashtra Value Added Tax Act, 2002. I have already reproduced hereinabove the said entry C-81. The schedule entry speaks of a notification to be issued for the purposes of the said entry.

It is the contention of the applicant that, the description against the notification for the purposes of the said entry during the period 1/4/2005 to 30/4/2005 would cover his product 'terry towel'. Hence, let us reproduce both the descriptions :-

Heading	Central Excise	Notification dt. 1/4/2005
6304	<i>Other furnishing articles, excluding those of heading 9404.</i>	<i>Other furnishing articles, excluding those of Heading No. 94.04 of Chapter 94 of the Central Excise Tariff Act, 1985.</i>

Thus, the description under both the Acts, matches. Now, 'terry towel' is covered by the excise heading 6304 92 50. Since the main heading under Central Excise is taken in its entirety for the purposes of the notification, it goes without saying that the sub-heading would get covered by the notification.

Hence, the product 'terry towel' would be covered by the schedule entry C-81 during the period 1/4/2005 to 30/4/2005, thereby attracting tax at the rate of 4%.

Thus, the determination order dt. 27/03/2006 would require a rectification as above as regards the observation about the schedule entry and the rate of tax applicable to the product during the period 1/4/2005 to 30/4/2005.

[B] 1/5/2005 TO 31/03/2006

The determination as regards the rate of tax applicable to the product 'terry towel' during this period requires no rectification. There was a specific entry A-51(vii) for the product during this period.

Now, the notification dt. 1st April,2005 for the purposes of the schedule entry entry C-81/C-81(b) was amended by the new notification dt. 1st June,2005 for the purposes of the said entry which sought to exclude 'towels' from the description against the heading 6304 for the purposes of the notification. This was due to the fact that, towels were made tax-free from 1/5/2005 by the inclusion of the entry A-51(vii) in the Schedule 'A' appended to the Maharashtra Value Added Tax Act,2002.

However, for the month of May,2005, the product 'terry towel' was covered by two entries i.e. A-51(vii) and C-81(b). This was due to the fact that, the exclusion of towels from the notification for the purposes of the schedule entry C-81(b) was made in the month of June, 2005 by the notification dt. 1st June, 2005 whereas the inclusion in the entry A-51(vii) was made in May,2005. In such circumstances, the product 'terry towel' would be covered by the schedule entry A-51(vii) which is beneficial to the applicant.

The determination requires no rectification during this period.

[C] 1/4/2006 onwards

The schedule entry A-51(vii) which was introduced in May,2005 was previously for the period 1/5/2005 to 31/3/2006 only. By the notification dt. 27/4/2006, the said entry A-51(vii) was made effective for the period starting from 1st May,2006 to 30th September,2006. The effective period was further extended upto 31/3/2007 by the notification dt. 30/9/2006.

The word 'towels' was excluded from the notification for the purposes of the schedule entry C-81(b) with effect from 1/6/2005 by the notification dt. 1st June,2005. The word 'towels' was again added to the said notification by the notification dt. 27/4/2006 but the inclusion was made effective from dt. 1/10/2006. The said inclusion was again made effective from dt. 1/4/2007 instead of dt. 1/10/2006 by the notification dt. 30/9/2006. This inclusion was extended due to the fact that, towels were made tax-free by the extension of the effective period of the entry A-51(vii) upto 31/3/2007. The above would mean that, once the schedule entry A-51(vii) ceases to exist, the product would be placed in the schedule entry C-81(b).

As can be seen from the above two paras, the amendments to both the entries A-51(vii) and C-81(b) were made after dt. 27/03/2006 which is the date of the determination order. The position as on dt. 27/03/2006 which is the date of the determination order for the period 1.4.2006 onwards was as follows :

- (a) The entry A-51(vii) for the product 'towels' was for the period 1/5/2005 to 31/3/2006 only. Hence, the entry A-51(vii) was not in existence from 1.4.2006 onwards.
- (b) The word 'towels' was excluded from the notification issued for the purposes of the schedule entry C-81(b) with effect from 1/6/2005. Hence, the entry C-81(b) could not be made applicable to the applicant's product.

The above position would mean that the schedule entry and the rate of tax applicable to the product 'terry towel' for the period 1.4.2006 onwards would be 12.5%, being covered by the residuary schedule entry E-1.

Hence, the determination order dt. 27/03/2006 would require no rectification as regards the observations made in respect of the period 1.4.2006 onwards.

04. FINDINGS

A determination as regards the schedule entry and the rate of tax applicable to a product is always with reference to a transaction evidenced by a sale bill of a particular date. In the present case, the transaction posed for determination was in respect of the product 'terry towel' sold vide invoice dt. 5-5-2005. Accordingly, it was determined that, the product 'terry towel' sold vide invoice dt. 5-5-2005 would be covered by the schedule entry A-51(vii), thereby attracting tax @ Nil %.

Certain observations were also made as regards the schedule entry and the rate of tax applicable to the product 'terry towel' for the period 1/4/2005 to 30/4/2005, 1/5/2005 to 31/3/2006 and 1/4/2006 onwards. However, only the observations in respect of the period 1/4/2005 to 30/4/2005 require a rectification.

In **para no. 03[A]** of this order, I have observed that during the said period, the product 'terry towel' would be covered by the schedule entry C-81 being covered by the description against the heading 6304 notified for the purposes of said entry, thereby attracting tax @ 4%. Hence, the determination order dt. 27/3/2006 in the

case of the applicant would require a rectification as above in respect of the period 1/4/2005 to 30/4/2005.

In view of the deliberations held hereinabove, I pass an order as follows:-

ORDER

(Under Section 24 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2005/Adm-5/20/B- 01

Mumbai,dt. 3.3.2007

The request of the applicant for rectification of the determination order No.DDQ-11/2005/Adm-5/20/B-5, Mumbai, dt. 27/3/2006 as regards the schedule entry and the rate of tax applicable to the product 'terry towel' is answered as follows:-

Period	Determination	Rectification
1/4/2005 to 30/4/2005	<ol style="list-style-type: none"> 1. The product would be covered by the schedule entry E-1 of the Maharashtra Value Added Tax Act,2002, thereby attracting tax @ 12.5%. 2. The applicant may avail of administrative relief on fulfillment of conditions as laid out in the Circular No. 34T of 2005 [No. VAT-2005/Act/VD-/Adm-3,Mumbai, dt. 26.10.2005]. 	<ol style="list-style-type: none"> 1. The product would be covered by the schedule entry C-81 of the Maharashtra Value Added Tax Act,2002, thereby attracting tax @ 4%. 2. The applicant may avail of administrative relief on fulfillment of conditions as laid out in the Circular No. 34T of 2005 [No. VAT-2005/Act/VD-1/Adm-3 Mumbai, dt. 26.10.2005].
1/5/2005 to 31/3/2006 (Bill dt. 5/5/2005)	The product would be covered by the schedule entry A-51(vii) of the Maharashtra Value Added Tax Act,2002, thereby attracting tax @ Nil%.	No Rectification required.

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