



Read :- 1. Application dated 17th Jan, 2005 from M/s. Santogen Exports Ltd.

2. This office letter dated 9th June, 2006 calling the applicant for hearing on 10th January, 2006.

Heard :- Shri Mahabirprasad S. Deora, STP attended on behalf of the applicant.

PROCEEDINGS

(Under Section 52(1) (e) of the Bombay Sales Tax Act, 1959)

No.DDQ-11/2005/Adm-5/4/B-6

Mumbai,dt. 27/03/2006

An application is received from M/s. Santogen Exports Ltd. of Tax Centre N-402/403,4th flr., 26A, Chandivali Saki Vihar Road,Andheri (East),Mumbai-400 072 holder of Registration Certificate No.400072/S/1527 w.e.f. 1.4.1996, posing the question for determination as "Whether the sale of Terry Towel is exempted under Entry 134 of Group A under the notification issued under section 41 of the Bombay Sales Tax Act,1959 ?". The applicant desires to know whether the sale witnessed by the Sale Invoice No. 583 dt. 11/01/05 whereby the product "Terry Towel" is sold, is exempt from tax in view of the above mentioned notification.

BACKGROUND OF THE CASE

02. The applicant company is engaged in the manufacture and export of Terry Towels at its factory situated at Khopoli, Dist. Raigad in Maharashtra. The goods are sold in Maharashtra as well as out of Maharashtra and India.

The applicant submits that "Terry Towel" is included in the word "Towel" for the purpose of Notification entry A-134. The applicant submits that his unit cannot be branded as a Composite Mill, as a Composite Mill is supposed to be a full fledged Composite Textile Unit manufacturing yarn and then fabrics and involving processing activities. The applicant has no resources to manufacture yarn and is therefore purchasing yarn from the market and then weaving the towels on his weaving machines. Hence the applicant is of the opinion that his unit can be described as a Powerloom Unit and not a Composite Mill. The notification entry 134 of Group A pertains to towels, chaddars and wall hangings produced on handlooms or powerlooms not being a composite mill. The applicant is of the view that the towels manufactured and sold by him are exempted from whole of tax since the notification entry specifically includes items produced on handlooms or powerlooms but excludes items produced in a composite mill.

The applicant, as a matter of precaution, seeks hereby to confirm his views about the impugned product being covered by the said notification entry.

DETAILS SUBMITTED ALONGWITH APPLICATION

03. The applicant has submitted the following details along with the application :-

- 1) Copy of the Invoice No. 583 dated 11/01/05 selling therein "Terry Towels".
- 2) Letter of Authority authorizing Shri. Mahabirprasad S. Deora, STP to attend on behalf of the applicant.
- 3) Certification from Superintendent of Central Excise certifying therein that M/s. Santogen Exports Ltd. is not a Composite Mill and are having weaving and processing facilities.

CONTENTION AND HEARING

04. The applicant is of the opinion that his product "Terry Towel" falls under Entry 134 of Group A of the notification issued under section 41 of the Bombay Sales Tax Act, 1959 and thereby exempt from whole of tax. The notification entry specifically excludes items produced in a composite mill and the applicant not being a composite mill would squarely be covered by the scope of the entry. In brief the applicant is of the opinion that his product would be exempted from tax by coverage under notification entry 134 of Group A. He seeks confirmation of his opinion through this application for determination.

The case was kept for hearing on 10th January, 2006. Shri Mahabirprasad S. Deora, STP, duly authorized, attended on behalf of the applicant. The facts as presented in the application were reiterated in the hearing.

OBSERVATIONS

05. I have gone through the facts of the case. The applicant has posed the question as regards the rate of tax applicable to their product "Terry Towel" sold vide Invoice No. 583 dt. 11/01/05.

TREATMENT UNDER BST ACT, 1959

Let me first look at the treatment to the impugned product under the Bombay Sales Tax Act, 1959 so far 3 relevant notifications under section 41 are reproduced below:

1. Notification No. A-80 :

Col. 1	Col.2	Col.3	Col.4	Col. 5
Notification Entry	Class of sales or purchase.	Extent of Exemption	Conditions	Period
A-80	Sales or purchases made on or after the 27 th day of March, 1987 by a dealer of towels and Solapuri Chaddars	Whole of Tax	(i) The goods referred to in Column (2) are produced on powerlooms by an independent powerloom owner, not being a textile mill. (ii) The claimant dealer has not collected tax separately in the bill/ cash memo/ invoice issued to customer. (iii) Notwithstanding anything contained in Column (3), if the tax has been paid or otherwise recovered in part or full in respect of the period starting on the 27th March,1987 and ending on the 1st May,1998 [both days inclusive] then the exemption shall be subject to following conditions : 1) where tax is paid or recovered in full	27/03/1987 to 31/03/1999

			shall be granted, OR 2) Where tax is paid or recovered in part then the exemption shall be restricted to the extent of unpaid tax.	
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2. Notification No. A-123 :

Col. 1	Col.2	Col.3	Col.4	Col. 5
Notification Entry	Class of sales or purchase	Extent of Exemption	Conditions	Period
A-123	Sales or Purchases of towels and Solapuri Chaddars by a dealer made during the period commencing on the 27 th March, 1987 and ending on the 31 st March,1999	Whole of Tax	(i) The goods referred to Column (2) were produced on handlooms or in the composite mills situated outside the State. (ii) The claimant dealer has not collected tax separately in the Bill/Cash Memo/Invoice issued to customer. (iii) Notwithstanding anything contained in Column (3), if the tax has been paid or otherwise received in part or full in respect of the period commencing on the 27th March,1987 and ending on the 31st March,1999 (both days inclusive) then the exemption shall be subject to the following conditions :- (1) Where tax is paid or recovered in full then no exemption shall be granted OR (2) Where tax is paid or recovered in part then the exemption shall be restricted to the extent of unpaid tax.	27/03/1987 to 31/03/1999

3. Notification No. A-134 :

Col. 1	Col.2	Col.3	Col.4	Col. 5
Notification Entry	Class of sales or purchase	Extent of Exemption	Conditions	Period
A-134	Sales or purchases by a dealer made on or after 1 st April, 1999 of towels, chaddars and wall hangings produced on handlooms or powerlooms not being a composite mill	Whole of Tax.	(i) The claimant dealer has not collected tax separately in the bill/cash memo/invoice issued to customers. (ii) Notwithstanding anything contained in Column (3), if the tax has been paid or otherwise recovered in part or full in respect of the period commencing from the 1st April, 1999 then the exemption shall be subject to following conditions:- (1) Where tax is paid or received in full then no exemption shall be granted OR (2) Where tax is paid or recovered in part then the exemption shall be restricted to the extent of unpaid tax.	01/04/1999 to 31/03/2005

What the above notifications convey could be summarized thus :-

- 1) (a) During the period from 27-3-1987 to 31-3-1999, towels were exempted from whole of tax.
- (b) The exemption at (a) above was subject to certain conditions, such as :-
 - (a) The towels should have been produced on powerloom/handloom [not being a textile mill/composite mill].
 - (b) The claimant dealer should not have collected tax separately.
 - (c) If the tax is paid or recovered in full, then no exemption shall be granted.

unpaid tax.

2) a) During the period from 1-4-1999 to 31-3-2005, towels were again exempt from the whole of tax.

(b) The exemption at (a) above was subject to certain conditions such as :-

- (a) The exemption was restricted only to towels produced on handloom or powerloom, not being a composite mill.
- (b) The claimant dealer should not have collected tax separately in the bill.
- (c) If the tax is paid or recovered in full, then no exemption shall be granted.
- (d) If the tax is paid or recovered in part, then the exemption shall be restricted to the extent of unpaid tax.

Thus, tax on towels, if produced on handloom/powerloom was Nil, subject to fulfillment of conditions as mentioned above.

The applicant's sale is on date 11/01/2005. Hence, notification entry A-134 would be applicable to his case. Now as mentioned above, the notification entry becomes applicable only if the conditions mentioned therein are satisfied. The notification entry A134 pertains to sales or purchases by a dealer made on or after 1st April, 1999 of towels produced on handlooms or powerlooms not being a composite mill.

Here I would not enter into the debate as regards whether 'Towels' would include 'Terry Towels'. A 'Towel' as per Webster's Dictionary means "*a piece of absorbent material used to dry something*". A "Terry cloth" as per Webster's Dictionary means "*a cotton pile fabric made of uncut loops, used e.g. for toweling*". The notification entry pertains to Towels and Towels would include all types of towels unless they are specifically excluded from the scope of Towels meant for the purpose of the said notification entry. The notification entry has no such exclusion clause. Under Central Excise, towels are covered by the tariff heading 6304 – *Other furnishing articles, excluding those of heading 9404*.

6304 92 50 Terry Towel

6304 92 60 Towels, other than terry towel

Thus towels are classified under the same tariff heading. There actually is no relevance of this treatment under the Central Excise Act as under the Bombay Sales Tax Act, 1959, the item notified is 'Towels' which includes in its fold all types of towels.

Hence now what is to be seen is (a) whether the applicant unit is a handloom or powerloom unit AND (b) whether the applicant unit is/is not a composite mill.

The applicant has produced a Certification from the Superintendent of Central Excise, certifying therein that M/s. Santogen Exports Ltd. is not a Composite Mill and that they are having weaving and processing facilities.

In view of the above, let me take a look at the meaning of a Composite Mill.

1] A 'Composite Mill' has been defined in one of the judgments under Central Excise as "a 'Composite Mill' is one which contains two departments amongst others, namely spinning and weaving departments and the yarn manufactured in spinning department is consumed in weaving department of the same mill" – *Collector v. Kohinoor Mills* -1995 (77) E.L.T.42 (S.C.).

2] For the purposes of the notifications (e.g 62,63) under Central Excise, "a "composite mill" means a

crocheting of fabrics within the same factory and includes a multi-locational composite mill, i.e., a public limited company which is engaged in the processing of fabrics with the aid of power along with weaving or knitting or crocheting of fabrics in one or more factories owned by the same public limited company." [Notification No. 52/2001-C.E. (N.T.) dated 29-6-2001 as amended by Notification No. 8/2003- C.E. (N.T.), dated 1-3-2003]

The above definitions assume the fact that spinning and weaving/knitting/crocheting must be carried on in the same mill. Thus a composite mill is one in which both the activities of spinning and cloth manufacturing exist in the mill. In the context of the present case, the fact is that the applicant's unit does not manufacture yarn. The yarn is purchased from the market and then the towels are woven on their weaving machines. Thus, the activities of spinning and weaving do not co-exist in the applicant's unit. Hence, the applicant is rightly of the opinion that his unit can be described as a Powerloom Unit or a weaving unit and not a Composite Mill. This fact is also confirmed in writing by the Superintendent of Central Excise.

The facts that the applicant does not manufacture yarn as well as the certificate by the Superintendent of Central Excise go to prove that the applicant's unit cannot be regarded as a composite mill.

CONCLUSION

06. In view of the above, I am of the opinion that the applicant's unit, not being a composite mill, can avail of the benefits of the notification issued under section 41 of the Bombay Sales Tax Act, 1959. As a result, the rate of tax on "towels" sold vide Invoice No. 583 dt. 11/01/05 would be NIL, being covered by the above entry, i.e., A-134 subject to fulfillment of conditions as reproduced herein above specified for the purpose of the said notification.

07. In view of the deliberations put forth hereinabove, I proceed to pass an order as follows :

ORDER

(Under Section 52(1) (e) of the Bombay Sales Tax Act, 1959)

No.DDQ-11/2005/Adm-5/20/B-06

Mumbai, dt. 27.03.2006

The question posed for determination as regards the applicability of Entry 134 of Group A under the notification issued under section 41 of the Bombay Sales Tax Act, 1959 to the sale of "Terry Towel" evidenced by Invoice No. 583 dt. 11/01/05 is herein answered in the affirmative. The transaction would, therefore, attract tax @ NIL rate subject to the fulfillment of conditions as reproduced hereinabove specified for the purpose of the said notification.

(B. C. KHATUA)

**Commissioner of Sales Tax,
Maharashtra State, Mumbai**

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