

Read :- Application dated 25th July, 2005 by M/s India Gypsum Ltd., holder of
Registration Certificate No. 400069/S/4170.

Heard :- Shri P.S. Deshpande, C.A. & Shri. Dharmesh Panchal, C.A.

Representatives of M/s. Price Waterhouse Coopers for the applicant.

PROCEEDINGS

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

No. DDQ-11-2005/Adm-5/56/B-01

Mumbai, dt. 14.11.2005

The applicant M/s. India Gypsum Ltd., having office address as 349, Business Point, 7th floor, Western Express Highway, Andheri (East), Mumbai-400 069 have requested for determination of the rate of tax applicable on “gypsum based boards and plasters”.

Statement of Facts :

The applicant is engaged in the manufacture of gypsum based products and he is the only manufacturer of such products in the country. The applicant is in the process of setting up a manufacturing plant at Wada in the State of Maharashtra, which would manufacture the gypsum based products. The gypsum based products which are manufactured and marketed by the applicant are “Gypsum board and Gypsum Plaster”. The basic ingredients of these products are natural gypsum or synthetic gypsum which constitute more than 97% of the final product. The products namely Gypsum Board and Gypsum Plaster are used for application in the interior spaces of commercial or residential properties.

Contention of the Applicant :

The contention of the applicant is that the product is covered by Schedule entry C-41 under the expression of “Gypsum of all forms and descriptions” and taxable @ 4%.

Product Information

The constituent of the product and manufacturing process is as under.

Sr.No.	Raw Material	Gypsum Board	Gypsum Plaster
		% RM required by weight	% RM required by weight
1.	Natural Gypsum/Synthetic Gypsum	99%	96.8 – 97%
2.	Paper for Boards and Vermiculite	0.5%	2-3%

Sr.No.	Raw Material	Gypsum Board	Gypsum Plaster
	or Perliite for Plaster		
3.	Additives	0.5%	0.1-02%

Process of manufacture of Gypsum Board :

Gypsum board is manufactured using the natural gypsum/synthetic gypsum, paper and additives. The manufacturing process is given below.

Gypsum is hydrated by calcination which results in the production of stucco. In other words, natural gypsum or synthetic gypsum is converted into hemihydrate gypsum through calcination. Calcination is the process of holding a material for prolonged periods at elevated temperatures to remove moisture. The stucco is cooled to be used for the manufacture of calcinate plasters. The bottom paper reel and the top paper reel are mounted on respective roll beds. The required quantity of additives are fed continuously to mixture. In the mixture of the stucco, additives, water, foam will be mixed and fed on the moving bottom paper continuously in the form of slurry. The slurry will be spread on the bottom paper. The top paper will be bud to the bottom paper through additives. The gypsum board will be conveyed onto the moving conveyor and cut to required length on the cutter. The board is then dried after which they become hard and handled without damage.

Process of manufacturing of Gypsum Plasters :

Dehydrate gypsum is converted into hemihydrate gypsum through calcination. The additives are mixed with hemihydrate gypsum. It is then cooled and bagged. At site – the hemihydrate gypsum is mixed with water and re-converted into dehydrate gypsum. The stucco is then ground and additives are mixed with it which results in gypsum plasters.

The applicant, while contending that the product is covered by Schedule entry C-41, have referred to the following decisions .

1) Commissioner of Sales Tax Vs. Sultan Shev Co. [(1977) 40 STC 0583 Bombay High Court).]

In this case, it was held that “shevya or vermicelli” is a form of cereal and pulses and would therefore come under the expression “Cereal and pulses” and in all forms.

2) Kapildeoram Baijnath Prosad Vs. J.K. Das & Others [(1954) 005 STC 0365 (Assam High Court):

In this case, the issue was whether “chira and muri” is a form of “all cereal

and pulses. The High Court observed that words “all cereals including all forms of rice.”

3) Ghasi Ram Hari Ram Vs. Commissioner of Sales Tax, Delhi [(1992) 30 STC 088 (Delhi High Court)] :

In this case, it was held by the Court that the expression “all forms of rice” would embrace within its fold, the rice in all its forms as rice in raw form fried form or parched form.

Documents attached with the application :

Sales invoice of the product.

Sample packet of gypsum powder.

Right up of manufacturing process of both the products.

Form 709 [Authority of the representative].

Copies of the cases cited above.

The case was fixed for hearing on 29.09.2005. Shri. P.S. Deshpande, and Shri. Dharmesh Panchal, of PriceWaterhouseCoopers attended on behalf of the applicant. Shri Deshpande arguing the case stated that, in view of the Trade Circular 29T of 2005 issued on 29.09.2005, the issue of rate of tax on gypsum plaster is now settled.

In the said circular, relying upon the Central Excise classification and meaning of plaster as in Condensed Chemical Dictionary, it is clarified that, the gypsum plaster are covered by the scope of schedule Entry C-41 of MVAT Act, 2002.

In respect of gypsum board, it is stated that it is gypsum in the form of board. The chemical contents of the board shows that it contains more than 90% of gypsum. He relied upon the various case laws including the Bombay High Court decision in the case of Sultan Shev Co. (cited supra). In view of the above, he requested that his other products gypsum board should also be classified under Schedule entry C-41 of the Maharashtra Value Added Tax Act, 2002.

I have carefully gone through the contentions of the applicant as well as the submissions made by him. The issue regarding rate of tax of gypsum plaster is clarified in Circular 29T dated 29.09.2005, and hence, the only issue requires determination in this order is the rate of tax on gypsum board. Before deciding the issue, it would be necessary to read the relevant entry. For the sake of clarity, the entry is reproduced hereinbelow.

“C-41 : Gypsum of all forms and descriptions “.

The aforesaid entry covers gypsum in all its forms and descriptions and therefore the applicant has heavily emphasized on the expression “in all its forms and description”.

I will have to decide whether gypsum board can be covered by the said expression. In order to decide this, it would be relevant to look into the chemical composition of the product as well as process of manufacturing which is already reproduced earlier in this order while take up the product one by one.

Gypsum Board : A careful reading of the manufacturing process of gypsum board reveals that gypsum board is a product of gypsum. The Plaster of Paris produced from gypsum is, however, subject to certain processes like reeling and extrusion and mounting of paper on both sides, the result of which is a gypsum board. Can gypsum board be a form of gypsum is the question to be decided. After an examination of the submissions as well as the write-up, I do not find that the contention of the applicant regarding its classification could be accepted. Plaster of Paris is a form of gypsum but gypsum board is not. It is an article manufactured out of gypsum, after a number of processes which clearly distinguishes it from gypsum. Under the HSN, gypsum boards are classified under heading 68 under the category of articles of plasters. It does not classify gypsum board under heading 2520, which inevitably leads us to the conclusion that gypsum boards are different products. The expression 'forms of gypsum' is not extensive enough to cover the products manufactured out of gypsum. In fact, the entry also classifies stucco as a product of gypsum and not as gypsum. The forms of gypsum would cover hydrated or dehydrated forms of gypsum and not the further articles which are produced out of hydrated and dehydrated gypsum. In the process of manufacturing of gypsum board, paper is mounted on the top and bottom to give the product an appearance of a board. It is, therefore, specifically identifiable as a gypsum board and due to the process the product undergoes a number of changes and it does not remain gypsum or plaster. It becomes a board and is also known as a 'board' in trade parlance. The board cannot be called as a 'form of' gypsum' as the term 'form' does not cover the product manufactured out of the original material. The Dictionary meaning of the word "forms including the shape or mode of being an object, as observed in the case of Sultan Shev (cited supra). The expression 'forms of rice' would embrace within its fold rice in all its forms. It would include rice in various shapes i.e. rice in its raw form, dried form or parched form. Following this analogy, we can say that the form of gypsum, would cover the various forms of gypsum like ordinary gypsum, anhydrite plaster etc; it would not cover the products made out of gypsum which is what a board is. Plaster of Paris is a form of gypsum because it is gypsum which is partly dehydrated and it is also recognized as 'gypsum' in trade parlance. Although in this case, the fact that the

Legislature has gone a step further and has deemed fit to include the various forms of gypsum in the schedule entry C-41, it does not permit any excessive construction to be put upon the expression 'in all its forms and descriptions'.

The words "**form**" and "**description**" appearing the Schedule Entry have a specific meaning. The Oxford Dictionary defines the word "form" means, "the particular mode in which a thing exists or manifest itself". Thus, the word "**form**" appearing in the schedule entry C-41 has to be constructed as the various forms in which the gypsum occurs, such as the natural form, synthetic form hydrate form, anhydrate form etc.

The Oxford Dictionary defines the word "**description**" as a "**verbal representation**". It means the word "**description**" will include a verbal representation of that goods, such as gypsumplaster is also called as plaster of paris. It is the different connotation/verbatim by which a particular commodity is recognized. The words "**form**" and "**description**" certainly do not include in their ambit the articles and products of a commodity.

The further argument of the applicant that, since the gypsum constitutes 99% of the gypsum board, it should be is covered by the scope of the schedule entry C-41. If this argument is believed to be correct, then it would lend to absurd conclusion in that all products and articles of gypsum would then also be covered within the ambit of the schedule entry, which is certainly neither anticipated nor could be the intention of the legislature.

A statue of plaster of paris has more than 99% of gypsum plaster, but it can not be called as a "form of gypsum", as it is clearly an article of gypsum. Likewise, the gold ornament may contain more than 99% of the gold, but is always perceived as an article of gold and not a form of gold.

The legislation has consciously restricted the scope of the schedule entry only to various of forms and description of gypsum and therefore, the scope cannot be extended to cover the articles and products of gypsum.

To buttress his earlier contention, the applicant has placed heavy reliance on

the Bombay High Court judgment in the case of Sultan Shev Co (cited supra). The issue before the Court was whether "Shevya or Vermicelli" is a form of cereal and pulses. The relevant schedule entry at that time was;

"cereals and pulses in all forms and flour including atta, maida, besan, suji and prepared therefrom, but excluding maize flour."

The said entry is not restricted only to all forms of cereals and pulses, and flour, but it is extended further by adding the word **including** atta, maida, besan, suji and prepared there from.

The Hon. Supreme Court in the case of *M/s. Hindustan Aluminium Corporation Ltd Vs. The State of Uttar Pradesh & Another 48 STC 411*, has interpreted the word "including". The Court observed that the word "including" must be understood in the conjunctive sense as a substitute for "and". It is this entry which was before the Bombay High Court, the atta, maida, besan suji are also considered as a form of cereals for the purpose of the schedule entry and on the interpretation of the schedule entry, as it existed at that time, the Bombay High Court reached the conclusion that the "Vermicelli" is a form of cereals. Certainly, the said judgment will not help the applicant in the instant case.

The Hon.Orissa High Court had an occasion to deal with the meaning of word "all forms" in the case of *M/s.Samadeshwari Stores Vs. State of Kerala [68 STC 228]*, wherein Court observes that the word **"all forms"** is different from the word "varieties" and therefore the "besan and suji" are not considered as a form of dal. It is apparent, that for interpreting the entries in the Schedule there is a clear demarcation between the word **"form"** and the **"product"**. The term "form", for the purposes of taxing statute, should be construed as the pre-process stage of the commodity and the word "product" as the post processed stage of a commodity.

Thus, the gypsum board are the product of gypsum and will not be covered by schedule entry C-I-21. Accordingly, the rate of tax thereon will be 12.5% under Schedule Entry E-1. The applicant's application is disposed of as under,-

1. the gypsumplaster is covered by schedule entry C-41 and will attract a tax @ 4%;
2. The rate of tax of Gypsum Plaster is clarified in Trade Circular No.29T of 2005 dated 29.09.2005.
3. Gypsum board is covered by schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby attracting a tax @ 12.5%.

Therefore, with reference to the deliberations made above, I come to the conclusion that the benefit of inclusion under the entry C-41 cannot be extended to 'Gypsum Board'.

ORDER

(Under Section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/56/B-01

Mumbai, dt.14.11.2005

With reference to the discussion held hereinabove, it is held that the product gypsum board, sold vide invoice No.5190356 dt.21.4.2005, would be covered by schedule entry E-1 taxable @ 12.5%.

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