

Read:1. Application dated 07-06-2005 under Section 56 of the Maharashtra Value Added Tax Act,2002 received by this office on 10-06-2005 from M/s. Rajpal Plastic Industries., holder of Certificate of Registration No. 400003/S/15570.

2. Submission dated 18-10-2005 from Shri. B. D. Advani, Advocate on behalf of the applicant.

Heard : Shri. B. D. Advani, Advocate attended on 25-10-2005.

PROCEEDINGS

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

No.DDQ-11-2005/Adm-5/26/B-03

Mumbai,dt. 25.11.2005

An application is made by M/s. Rajpal Plastic Industries., holder of Certificate of Registration No.400003/S/15570, having place of business at 185, Nagdevi Street, 1st floor, Mumbai-400 003, seeking determination of the rate of tax applicable to their product "multipurpose brushes" sold vide Invoice No. 427 dated 2-6-2005.

BACKGROUND OF THE CASE :

02. The applicant is a manufacturer of multipurpose brushes for the past many years. The applicant used to pay tax under the Bombay Sales Tax Act,1959 on the impugned product @ 13% and also turnover tax and surcharge on it, there being no specific entry for the product, the same was covered under Schedule Entry C-II-152 of the Bombay Sales Tax Act,1959. The applicant is of the opinion that under the Maharashtra Value Added Tax Act,2002, the product would be covered by the Schedule Entry A-8, thereby, no tax could be levied on the impugned product. However, he has charged tax @ 12.5% as per Schedule Entry E-1 of the Maharashtra Value Added Tax Act,2002 as he himself had some doubt regarding the correct classification of his goods. In view of the confusion about the exact tax rate applicable to the product, the applicant has sought determination under Section 56 of the Maharashtra Value Added Tax Act,2002.

DETAILS SUBMITTED :

03. The applicant has submitted the following details in support of his claim:-

- (i) Tax Invoice No. 427 dated 02-06-2005 wherein the item sold is described as "multipurpose brush".
- (ii) Photocopies of the impugned product i.e multipurpose brushes.
- (iii) Submission dated 18-10-2005 by Shri. B. D. Advani, Advocate reiterating the facts mentioned in the application.

- (iv) Zerox copy of the decision in the case of M/s Arya Vaidya Pharmacy & Another Vs. State of Tamil Nadu.

CONTENTION OF THE APPLICANT :

04. The applicant is of the opinion that his product “multipurpose brushes” falls under schedule entry A-8 of the Maharashtra Value Added Tax Act, 2002. The applicant claims that the brushes are used in cleaning,-

- (a) Toilet Floors,
- (b) Room Floors,
- (c) Cleaning and washing dirty clothes.

The applicant himself mentions in the application that the product brushes being manufactured out of plastic powder, may also fall in Schedule-E liable to tax @ 12.5%. On the safer side, the applicant has preferred to charge tax @ 12.5% on his sales of the impugned product.

05. The applicant has noted in his application that, as there is a **specific schedule entry A-8** as well as a **general schedule entry E-1**, the specific entry will prevail over the general entry. The applicant further stated that, when any item falls under two schedule entries having two different rates of tax then the said item will fall in the schedule entry which is beneficial to the assessee.

The applicant has quoted the following judgements in his application :-

- (a) Dey’s Medical Stores [134 STC Page-1].
- (b) Automotive Enterprises [S.A.No. 174 of 1999 dt. 15-2-2003].
- (c) Dubey Elec. Co. [S.A. No. 1551-52 of 1995 dated 26-7-2002].

The applicant has therefore strongly contended that his product falls under the schedule entry A-8, thereby no tax is attracted.

HEARING :

06. The case was fixed for hearing on 18-10-2005. On 17-10-2005, Shri. B. D. Advani, Advocate attended and requested for adjournment of hearing to 25-10-2005 due to ill health.

07. On 25-10-2005 Shri. B. D. Advani, Advocate attended. He has submitted a written submission on 25-10-2005 which puts forth the following:-

- (1) Schedule entry A-8 lays emphasis on brushes of any type used to clean floors including toilet floors. Such brushes are made of (a) Coir (b) Nylon (c) Plastic (d) Iron Nails. Any brush out of the above four categories which cleans the floor is covered by the entry.

- (2) It is his claim that the plastic brushes being cheapest are mostly purchased and used in villages. They are also durable.
- (3) He relied on the Supreme Court decision in the case of M/s. Arya Vaidya Pharmacy & Others (73 STC- Page 346 S.C.) and further argued that, one cannot discriminate one brush from the other when all fall under one class or category of brushes. He has highlighted the following observation of the Supreme Court,

“ But where the commodities belong to the same class or category, there must be a rational basis for discrimination between one commodity and another for the purpose of imposing tax.”

08. The arguments put forth by Shri B. D. Advani, Advocate when he attended on 25-10-2005 are as follows :-

- 1) He is of the strong opinion that schedule entry A-8 of the Maharashtra Value Added Tax Act,2002 is a specific entry for all brushes. He further stated that, when there is general entry and a specific entry, the specific entry would override the general entry.
- 2) The brushes manufactured by the applicant can also be used to clean the floors and toilet and hence would squarely be covered by the schedule entry A- 8 of the Maharashtra Value Added Tax Act,2002.
- 3) As in application ,he has again sought my attention to the Supreme Court judgement in the case of M/s. Arya Vaidya Pharmacy [73 STC 346] wherein it is held that simply because the medicine has an alcoholic content, it does not cease to be an Ayurvedic medicine.
- 4) In the end he prayed that in case the product is held to be not covered by schedule entry A-8 of the Maharashtra Value Added Tax Act,2002 then the prospective effect to the determination order may be given.

OBSERVATIONS :

09. I have carefully gone through the submissions made by the applicant. I would proceed to go through each of the claims made by the applicant.

The applicant claims that his product is covered by schedule entry A-8 of the Maharashtra Value Added Tax Act,2002. Let us take a look at this entry.

Schedule Entry A-8	Broomsticks and brushes of a type used to clean floor including toilet floor.	Nil.
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The appellant argues that, the brushes manufactured by him are multipurpose brushes and can also be used to clean the floor including the toilet floor.

The appellant has submitted photo copies of the brushes for which the determination is herein sought. A plain view of the brush and one can easily come to the conclusion that the said brush is a brush used **to scrub and clean clothes and not floor.**

The Central Excise Tariff heading 96.03 reads thus :

“Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand operated mechanical floor sweepers, not motorized, mops and feather dusters, prepared knots and tufts for broom or brush making, paint pads and rollers, squeegees (other than roller squeegees)”.

This heading covers all type of brushes including toilet brushes.

Now let us take a look at schedule entry A-8 of the Maharashtra Value Added Tax Act,2002 which reads thus :

“ Broomsticks and brushes of a type used to clean floor including toilet floor”

It can be clearly seen that the legislation has consciously adopted a restrictive entry for brushes under schedule entry A-8 of the Maharashtra Value Added Tax Act,2002, thereby restricting the scope of the entry only to “Broomsticks and brushes used to clean floor including toilet floor. It does not cover or include all types of brushes but includes only those broomsticks and brushes which are used to clean floor including toilet floor.

Even under the Bombay Sales Tax Act,1959 ‘we have the following schedule entry.

A-23	“Household articles as may be notified by the State Government from time to time by notification in the Official Gazette”
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The following articles were notified for the purpose of the said entry :-

1. Rolling board and rolling pin (polpat latne) both made wholly of wood.
2. Dusters covered by entry 15 of schedule A
3. Brooms made out of grass and cocobrooms (kersuni,kharata)
4. Brushes of a kind used for cleaning floor, including toilet floor and

- having wooden handles and non metallic bristles.
5. Earthen math.

Thus, even under the Repealed B.S.T Act,1959, the tax free status was granted only to brushes used to clean the floor including toilet floor with a further restriction as to the make of the brush, i.e, having wooden handles and non metallic bristles.

The notification to entry A-23 pertains to brushes under Bombay Sales Tax Act,1959, and schedule entry A-8 of the Maharashtra Value Added Tax Act,2002, although not congruent but are similar. Since, under the Bombay Sales Tax Act, the said goods of the applicant were neither treated as tax free nor is claimed by the dealer like it, I do not find any reason to deviate from the earlier position under Bombay Sales Tax Act,1959 regarding the rate of tax of these goods.

If the intention of the Legislation can be seen to restrict the scope of the schedule entry, then it is beyond the competence of the Court to expand the scope of the schedule entry which is so consciously restricted by the legislation.

The photocopies of the brush submitted by the applicant clearly indicate it to be a brush used to scrub and clean clothes and not floor. In absence of any specific classification, one has to adopt common parlance test to ascertain as to whether these brushes are generally used to clean the floor or the toilet floor or to clean and scrub clothes. In common parlance, the consumers are buying these brushes for scrubbing the cloth and not for cleaning the floor. It may be possible that some persons might use the brush to clean the floor. This will however not change the predominant use of these brushes.

JUDGMENTS :

10. Now let us take a look at the judgements cited by the appellant :-

- (1) **M/s Dey's Medical Stores Limited .v. Commissioner ,Trade Tax, UP**
(decided on May 23,2003) : It was held that the products **Keo Karpin brand hair vitaliser ,baby oil ,massage oil and antiseptic cream are covered by** entry No. 29 of **notification** No. ST-2-5785/x ,dated September 7, 1981 **relating to medicines and pharmaceutical preparations** AND NOT BY entry No.5 of **notification** No. ST-2-5784/x ,dated September 7, 1981 relating to cosmetics. If a commodity falls under two notifications then the notification which is beneficial to the assessee should be applied.

The facts of this case and the present case of M/s. Rajpal Plastic Industries., are different such that in the applicant's case there is a specific entry which categorically goes on to exclude the appellant's product from its coverage, leaving no scope for any ambiguity.

- (2) **M/s. Automotive Enterprises .v. The State of Maharashtra (SA No. 174 of 1999 dated 15th February,2003) :** The dealer was a reseller in auto parts. The dealer sold ball bearings as a part of tractor vehicles and motor vehicles and accordingly paid tax as per the entry of the same description even though there was a specific and special entry for all types of bearings. It was decided that the product being covered by two different schedule entries, the beneficial entry would be applicable .

Again this case and the case of M/s. Rajpal Plastic Industries are different wherein there are no conflicting entries but a specific entry not including the appellant's product within its ambit.

- (3) **M/s Dubey Electric Co. .v. The State of Maharashtra (SA No. 1551 & 1552 of 1995 dt. 26th July,2002) :** The dealer is a reseller and importer in electrical goods. The dealer sold black conduit pipes which being made up of iron, he treated the same as taxable covered by the scope of schedule entry B 6(xi) of the Bombay Sales Tax Act,1959 - tube fittings (conduit pipes are tube fittings, steel tubes) . The conduit pipes being specifically used as cases for fitting and supplying of electrical wires from point to point and from place to place, the dealer was assessed to tax for the product as covered by the entry for electrical goods. It was decided that the cardinal principle of interpretation of tariff entries is that if an item falls in more than one entries, then the entry which is most beneficial to the assessee has to be followed for the purpose of levy.

Again the facts of this case and the case before us are different, the reason being there is a specific entry which excludes the product of the appellant from its coverage and also there are no conflicting entries.

- (4) **M/s Arya Vaidya Pharmacy and Another V/s. State of Tamil Nadu :** The dealers were manufacturers of ayurvedic drugs and medicines including arishtams and asavas. Arishtams and Asavas contain alcohol and hence

the contention that due to the high alcoholic content in them, they could be used by drink addicts as alcoholic beverage was no reasonable basis for imposing higher rate of tax on sale of arishtams and asavas. The said judgment is not helpful to the applicant as the issue before the Supreme Court was whether a differential tax treatment can be given in respect of similar identified class of goods. It was not disputed by the revenue that, the said preparation is an ayurvedic preparations but legislation simply wanted to tax it at higher rate as it could also be used as alcoholic beverage. It is in the above context that the judgment is delivered. This has no bearing to our case. The schedule entry A-8 of the Maharashtra Value Added Tax Act,2002 covers within its ambit only the brushes which can be used to clean the floor **including** the toilet floor. It is important to note the said word 'including' as appears in the said entry. The Bombay High Court has an occasion to interpret the word "including" in case of M/s. Afson Industrial Corporation, 78 STC 383, and, therein it is observed that *"The normal function of the word "including" in an entry, is to indicate that though the items following the word "including" are of the type of the main item in the entry, there could be some doubt as to whether the main entry covered them or not and, therefore, the legislature specifically mentioned those items in the entry to remove scope for any doubt."*

The Allahabad High Court in case of Ashoka Dairy, 53 STC 239, had observed that, the word "including" is to be interpreted as "and". It is thus clear that whenever word "including" is used in the schedule entry or in notification, it is used in restrictive sense, so as to specifically include only those goods which are mentioned therein. The word "including" in the schedule entry leaves no scope to expand the ambit of the schedule entry. In interpreting the schedule entry, one has to look merely at what is clearly said and there is no scope for any intendment.

CONCLUSIONS :

11. The appellant has heavily relied on the above four judgements and hence requests his product to be covered by the scope of the schedule entry A-8 under the Maharashtra Value Added Tax Act,2002.

In the present case, the appellant feels that his product is covered by Broomsticks and brushes of a type used to clean floor including toilet floor. Now schedule entry A-8 has been specifically incorporated for *“broomsticks and brushes of a type used to clean floor including toilet floor”*. There is neither any contradiction nor any kind of clash in interpreting the above entry. There is clear-cut indication to include only broomsticks and brushes of a type used to clean floor and toilet floor. It means that all types of brushes are not included. It is commonly known that considerations of economic policy constitute a basis for levying different rates of sales tax. There may be several considerations bearing directly on the choice of the rate of sales tax and so long as there is good reason for making the distinction from other commodities, no complaint can be made. The conscious decision of legislation not to include all types of brushes, therefore, cannot be a matter of legal disputes and interpretation.

The appellant has mentioned in the application that his brushes are multipurpose brushes. But the fact remains that the pre-dominant and obvious use of the brushes is “scrubbing and cleaning cloth” only.

In the case of **M/s. Chetan Corportion, 142 STC 176 (Ker.)**, the issue before the Court as to whether the slotted angles and panels are parts of furniture. The Court held that although, this can be used for any other purpose, than use in furniture, the fact that it is predominantly used as furniture parts, and thus it has to be treated as parts of the furniture. The ratio of the judgement is very clear. An occasional use of a product for some other purpose, will not affect the classification of the commodity. In this case, the likely use of these brushes by some persons for cleaning the floors, will not take the brushes in the ambit of schedule entry A-8.

In view of the deliberations referred to hereinabove, I am of the opinion that the appellant’s product would not be covered by the scope of the schedule entry A-8 under the Maharashtra Value Added Tax Act,2002. The product would rightly be covered by the schedule entry E-1 under the Maharashtra Value Added Tax Act,2002.

The Advocate alternatively argued that, in case his arguments are not accepted then the prospective effect to the determination order be given. I have carefully considered the request of the learned Advocate. As earlier mentioned in my order the schedule entry A-8 of the Maharashtra Value Added Tax Act,2002 and the notification to schedule entry A-23 are almost similar. The applicant’s goods were earlier falling under the residuary entry under the Bombay Sales Tax Act, thereby attracting a tax @ 13%. This position was never disputed by the applicant. Even from 1-4-2005, under

VAT, the applicant has collected the taxes @ 12.5%. In view of the above facts and considering that there was never judicial misguidance regarding the correct classification of his goods, his request for the prospective effect is rejected.

Accordingly, I pass the order in the above case as follows :

ORDER

[Under Section 56(1)(e) of The Maharashtra Value Added Tax Act,2002]

It is hereby held that the transaction of sale vide invoice No.427 dt. 2/6/2005 is exigible to tax at the rate of 12.5% as per schedule entry E-1 under the Maharashtra Value Added Tax Act,2002 and hence, are not covered by the schedule entry A-8 under the Maharashtra Value Added Tax Act,2002 as contended by the applicant.

For the reasons explained in the body of this judgement, the request for giving the prospective effect to the order is also rejected.

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

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