Read : 1) Application dt.12.05.08 by M/s. Centuary Fibre Plates Pvt. Ltd. holder of TIN 27270002370V & C.

2) This office letters dt.16.5.09 and dt.01.09.09 calling for necessary details.

3) Applicant's communication dt.08.06.09, dt.24.08.09 & dt.11.09.09.

4) This office letter dt.04.08.09 calling the applicant for hearing on dt.11.08.09.

Heard : Shri. Ghanekar, S.T.P attended the hearing on dt.11.08.09.

PROCEEDINGS

(u/s. 56 (1)(e) & (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2008/Adm-3/22/B- 4 Mumbai, dt.22.12.09

An application is received from M/s. Centuary Fibre Plates Pvt. Ltd., of Sr. No. 135, Godown No. 3, Pranav Warehousing, Pune–Saswad Road, Opp. Sahyadri Dhaba, Uruli Devachi, Tal. Haveli, Dist. Pune– 412 308, requesting determination of the rate of tax applicable to the product 'Coir Blocks [SM_CBLOCK 100D 1829 x 762 x 76 mm] sold under invoice no. INV351 dt.28.04.08. The applicant has requested for prospective effect to the determination order, if his submission is not acceptable.

02. FACTS AND CONTENTION

The applicant is a manufacturer of coir blocks, rubberised coir mattresses. The factory is located at ID, Bollarum Taluka Narsipur Dist. Medak, Andhra Pradesh. The company is having a Depot in Pune. The applicant manufactures mainly 2 types of products : Bare coir blocks and covered mattresses. The applicant has submitted that the company under wrong advice has collected tax @ 12.5% on sales of both the above products. They were informed that the "Coir Bare Blocks" are covered by the scope of entry 24 of schedule 'C' & taxable @4%. The aforementioned dispute has led to the making of this application. In respect of sales of covered mattress, the applicant submits that he is taxing the same @12.5% as the same are excluded from scope of C-24 of schedule C of the Maharashtra Value Added Tax Act, 2002 [MVAT Act,2002]. The applicant informs that from bare coir blocks, finished mattresses are prepared. The manufacturing process of both the products as given by the applicant is as follows :

a. We are using rope (Coconut Fibre) as raw material. We are untwisting rope & separating it as a fibre.

b. We are using natural rubber (latex) with mixing of 9 to 10 several types of chemicals. It helps to bonding the coir to each other & for creating a flexibility (spring action). This is done in layers. The layers are collected & pressed as per the requirement.

c. After pressing the same, we vulcanise the same in "vulcanizer".

d. After vulcanizing, we cut the block as per requirement.

e. When blocks are ready, they are sold in the market. Some shop keepers are buying only Coir Bare Blocks. Others are buying ready made mattresses which are ready for sleep.

f. **Coir Block :** In market, shopkeepers are buying block for cushioning in vehicle, hospital & industrial packing use. Some people are making local mattresses by using foam, quilt etc.

g. **Covered Mattresses :** We are using bare block with side walling, layer of P.U. Foam or quilt cover & selling in market "Ready Made" Mattresses under Head "Centuary".

The applicant has contended as follows :

- The coir bare blocks are not mattresses as understood in law and also in common parlance.
- Bare Coir Blocks are never considered as mattresses by people dealing in the product.

- No body can sleep on “coir bare block.”
- The bare coir block is covered by the scope of “Coir Product”. It is a product made from coir. For manufacturer of the coir mattresses, layer of P.U. Foam is used & then it is covered by fabric. Unless P.U. Foam is used, side walling and covering by fabric is done, it does not become a coir mattress.
- ‘Coir bare block’ of various sizes are not mattresses. No customer buys such mattresses. The product is purchased by dealers who are preparing mattresses by using P.U. Foam, side walling.
- In all other States, the coir bare blocks are sold by paying tax @4%.
- Whenever the company prepares mattresses from such coir bare blocks, tax @ 12.5% is being paid. The applicant has, therefore, opined that the exclusion clause in the entry C-24 is not applicable to “coir bare block”.
- The applicant has requested for prospective effect to the determination order, if his submission is not acceptable.

03. HEARING

The case was taken up for hearing. Shri. A.B. Ghanekar (S.T.P.) attended the hearing. During the hearing he showed the sample of the impugned product. He submitted that the product is coir product. It is further submitted that the coir block is also used as packing material. Hence, the applicant is asked to submit evidence in respect of the other uses of the product. As regards the product containing latex rubber, it is submitted that inspite of other content (latex), the product remains a coir block. Reliance was placed on the judgment in the case of A. Nagaraju Bros. vs. State of Andhra Pradesh (95 STC 1) in which it was held that VIP suit-cases made of plastic by the method known as “injection moulding” and fitted with steel bands, locks and ancillaries made of other materials were “plastic articles”. It is submitted that the product is a raw material for making mattresses and other States are charging 4% tax on this product.

The applicant invited attention to the clarification given to the applicant earlier that the product would attract tax @12.5%. The request for prospective effect was also made.

04. OBSERVATIONS

I have gone through the facts of the case. The issue before me is whether the 'Coir Blocks' supplied by the applicant are covered by schedule entry C-24 of the MVAT Act, 2002. The schedule entry can be reproduced as below:-

"C-24 - coir and coir products excluding coir mattresses".

It is admitted by the applicant that the product is a coir product. Therefore, I need not go into the issue whether the product is a coir product or not. The only issue before me is whether it falls under the expression 'coir mattresses' which if the case, it would stand excluded from the scope of schedule entry C-24. It is contended by the applicant that his product is not covered under the exclusion clause of the schedule entry and that it is an 'uncovered coir block' which cannot be termed as 'coir mattresses'. It, therefore, becomes necessary to see the difference between the ‘coir bare blocks’ and ‘coir mattresses’.

I have gone through the process of manufacturing of the ‘coir bare block’. Coir is obtained from coir rope by the process of untwisting. The coir so obtained is placed in a sheet forming machine. Latex is sprayed on such sheets. The sheets are then pressed together to make blocks of required thickness. Then there is the process of vulcanizing after which the blocks are cut are sold.

In support of their contention that the product is not a ‘mattress’’, the applicant produced samples of the ‘coir block’ and a ‘coir mattress’. The samples of a mini bare coir block and a mini mattress brought before me reveals the following :

i. The piece of bare coir block is rough to touch whereas the quilted coir mattress is soft to touch.
ii. The piece of bare coir block appears to be cut from a bigger block. The quilted coir mattress is a finished item obtained by the following further processes :
    1. All the four sides of the bare blocks are secured by hessian cloth by using adhesive.
    2. On the upperside so secured, 'PU Foam' of higher density is stuck with adhesive.
    3. The whole piece so made is put into a quilt made up of lower density PU Foam and upholstery cloth.

The applicant has contended that it would not be possible to sleep on a bare block. It is further contended that unless P.U. Foam is used, side walling and covering by fabric is done, it does not become a coir mattress. The website of the applicant was referred so as to get an idea of the product. The page relating to Maximum Retail Price List revealed the prices of items of different sizes. The items are coir mattresses, coir cushions, bolsters/poly fibre pillows. Thus, the mattresses manufactured by the applicant are of standard size. It is further stated therein that - **All non standard sizes will take maximum 15 days**. This reveals that the applicant manufactures non standard products as per order. The applicant informs that the bare coir block is purchased by dealers who are preparing mattresses by using P.U. Foam, side walling. It follows, therefore, that the applicant is providing these dealers with blocks of the size of a standard mattress or a non-standard size made to order mattress. Thus, the bare block when intended to be purchased by manufacturers of mattresses will always be of the size of a standard/non-standard mattress. The uncovered bare block of the size of a standard/non-standard mattress can be put to no other use than a covered standard/non-standard size mattress. Des this make the product a mattress ? Before deciding the same, I shall refer to a judgement of the Excise Tribunal in the case of **Commissioner of Central Excise, Patna V. SSF Industries Ltd. (208-009-STR-405-TRIB).**

The issue involved was whether rubberized coir mattresses (uncovered), in view of size as well as manufacturing process involved, were eligible for exemption which was granted to products of coir industry. The exemption specifically excluded rubberized coir mattresses. In the Classification under Central Excise, during the material time, *mattresses of cellular rubber or plastics, whether or not covered* were classified under sub-heading 9404.21. The residual subheading 9404.29 covered *mattresses of other materials.* It was argued that since the expression "whether or not covered" has not been used under the residual subheading 9404.29, the same would cover only *rubberized coir mattresses* and not *un-covered coir mattresses*. The argument was dismissed to observe that *“In our view, even in the absence of the phrase "whether or not covered", mattresses of other materials would include both the covered mattresses as well as uncovered mattresses particularly in the absence of any expression excluding uncovered mattresses from the scope of the sub-heading. We also find that the relevant explanatory note for the heading 94.04 does not exclude uncovered mattresses from the scope of the heading. On the other hand, mattress supports are included under the scope of this heading.”* On the basis of verification, it was established, by the field officials therein, that the products were uncovered mattresses and not sheets going by the size of the same. It was also observed therein that – "*All that is required is a stitch of cloth covering on the said goods to make them covered mattresses.*"

Thus, it seems that on a factual verification of the case, the Excise Tribunal came to the conclusion that the difference between rubberized coir sheets and the rubberized coir mattresses is just a stitch of cloth. **However, as I see in the case before me and what seems material to me as to the fact that a 'coir bare block' cannot be used as 'mattresses'.** The difference is just not of a 'stitch of cloth'- the bare block of coir is an intermediate product which is first covered by foam of varying thickness and all the sides are stitched with quality upholstery cloth. The product therefore does not seem to be mattress. The difference between a coir bare block and a mattress is perceptible and visible to the naked eye. The impugned product is sold to dealers who further convert it into a 'coir mattress'. The coir block cannot be put to the same use as a coir mattress -. Further delving into the matter brings me to the following definition and meaning of a mattress.

The "core" of a typical mattress is the innerspring unit, a series of wire coils that are attached to one another with additional wire. The upholstery layers are affixed to the innerspring: the first, called the *insulator,* is fitted directly onto the innerspring and prevents the next layer, the *cushioning,* from molding to the coils. While the insulator is fairly standard, the number of cushioning layers can vary widely in number, ranging from two to eight layers and from 1/4 inch to 2 inches (.63 to 5 centimeters) in thickness. Moving outward, the next component is the *flanges,* connecting panels that are attached to the mattress's quilted cover with large, round staples called *hogs rings.* The top, bottom, and side panels of the mattress are stitched together with border tape.

Raw Materials

Mattresses are presently made of many materials, both natural and synthetic. The innerspring, helical, and boxspring components are made from wire; the boxspring wire is usually of a heavier gauge than that used in the innerspring. The insulator consists of semi-rigid netting or wire mesh, and the cushioning layers can comprise a number of different materials including natural fiber, polyurethane foam, and polyester. The flanges are made of fabric, and the hogs rings of metal. Top, bottom, and side panels consist of a durable fabric cover quilted over a backing of foam or fiber, and the binding tape that holds the ticking together is made of heavy-duty, fibrous, synthetic material. The underlying boxspring may consist of either a wooden frame with slats or of metal coils similar to those used in the mattress itself. The boxspring may be upholstered, but, even if it is not, it always receives a fabric covering.

Components of an innerspring mattress

A common innerspring mattress consists of three components: the spring core, the foundation, and the upholstery layers.

Upholstery layers

Upholstery layers cover the mattress and provide cushioning and comfort. Some manufacturers call the mattress core the "support layer" and the upholstery layer the "comfort layer." The upholstery layer consists of three parts: the insulator, the middle upholstery, and the quilt.

The insulator separates the mattress core from the middle upholstery. It is usually made of fiber or mesh and is intended to keep the middle upholstery in place.

The middle upholstery comprises all the material between the insulator and the quilt. It is usually made from materials which are intended to provide comfort to the sleeper, including regular foam, viscoelastic foam, felt, polyester fibers, cotton fibers, convoluted ("egg-crate") foam, and non-woven fiber pads.

The quilt is the top layer of the mattress. Made of light foam or fibers stitched to the underside of the ticking, it provides a soft surface texture to the mattress and can be found in varying degrees of firmness. The protective fabric cover which encases the mattress is called ticking. It is usually made to match the foundation and comes in a wide variety of colors and styles. Most ticking is made of synthetic fibers like polyester, or acrylic; or of natural materials such as latex, cotton, silk, and wool.

Thus, a mattress consists of three components : the spring core, the foundation, and the upholstery layers. The bare block in the present case does not have the layer of 'PU Foam' and the top upholstery layer which gives a soft surface texture to the mattress. The present product can in no sense of the tern be regarded as a mattress which is commonly perceived as a 'mattress'. It is true that the coir block put up for determination is of the size of a standard/non-standard mattress. However, merely being of the size of a standard/non-standard mattress would not be sufficient to term the bare uncovered coir block as a 'mattress'. Hence, I am convinced that the product put up for determination in the present proceedings is not a 'coir mattress' and thereby would not be excluded from the scope of the schedule entry C-24. I have already discussed that the impugned product is a 'coir product' and hence, the 'coir bare block' would be covered by the scope of the schedule entry C-24 of the MVAT Act,2002.

I have also come across an Excise Tribunal judgement which corroborates the view expressed by me. In the case of **Hosur Coir Foams Pvt. Ltd. V. CCE, Chennai (2006-(198)-ELT -0145 -CESAT) i**t was held that 'rubberised coir pad' cannot be the same as 'rubberised coir mattress'. The Tribunal accepted the contention of the applicant that there exists a difference between a 'rubberised coir pad' and a 'rubberised coir mattress', the difference being as follows :

The 'rubberised coir pad' is only an intermediate which could be converted into '**rubberised coir mattress**' only through the following processes :-

(a) The coir pads are covered with foam of varying thickness.

(b) All the sides are stitched with quality upholstery cloth by High Precision Machines. The top surface i.e., the cloth is either plain or quilted, Quilting is done by imported machinery only.

It was also pointed out to the Tribunal that in the conversion of 'rubberised coir pad' to 'mattress', there is a value addition of about 20-80%. The thickness of the mattress is said to be higher by 20% than that of the pad. It is submitted that, only after the above processes, the product is accepted in the market as a mattress.

On the above facts, it was held by the Tribunal that the 'rubberised coir pad' cannot be the same as 'rubberised coir mattress'.

Hence, I am convinced that the product put up for determination in the present proceedings is not a 'coir mattress' and thereby would not be excluded from the scope of the schedule entry C-24.

Having decided that the impugned coir bare blocks of the size of a mattress would attract a levy of tax @4%, there remain no deliberations to be made in respect of the request of the applicant for prospective effect to the determination order.

05. In the backdrop of the discussion held hereinabove, it is ordered as below:

ORDER

(u/ss 56 (1)(e) & (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2008/Adm-3/22/B-4 Mumbai, dt.22.12.09

The sale of 'Coir Blocks [SM_CBLOCK 100D 1829 x 762 x 76 mm] evidenced through invoice no. INV351 dt.28.04.08 is herewith determined to be covered by the schedule entry C-24 of the MVAT Act, 2002, thereby attracting tax @4%.

(SANJAY BHATIA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.