

Read: 1) Application dt.16.01.2008 under Section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002 from M/s. M-Tech Innovations Pvt. Ltd., holder of TIN No.27860410464 V.

2) This office communication dt.24.09.2008.

3) Applicant's letter dt.14.10.2008.

Heard: Shri P.V. Surte, Advocate.

PROCEEDINGS

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

No. DDQ-11/2008/Adm-3/05/B- 1

Mumbai, dt.07.12.09

The applicant, M/s. M-Tech Innovations Pvt. Ltd., holder of TIN No.27860410464 V having Registered Office at Mahavir Chambers, 12, Permanand Society, Balajinagar, Pune - 411 043. The applicant is a manufacturer of various types of printed materials.

02. FACTS OF THE CASE

The applicant has filed an application dt.16.01.2008 under the provisions of Section 56(i)(e) of MVAT Act, 2002 whereby a question is posed for determination that whether the item 'ID-ITZ Cash Plus Rs.1800' sold through Tax Invoice dt.09.01.2008 would be covered by schedule entry C-76 meant for 'Printed Material'.

03. HEARING

This office issued letter No.DDQ-11/2008/Adm-3/05/B-320, Mumbai, dt.5.8.2009 whereby the hearing was kept in the matter on 11th August, 2009. On the said appointed date, Shri P.V. Surte, Advocate, attended the proceedings. He urged that the impugned product is nothing but 'printed material' which has been manufactured for the purpose of complying the order placed by M/s. ITZ Cash Card Ltd. He emphasized the manufacturing process of the product and maintained that it would be covered by schedule entry C-76 meant for 'Printed Material' and exigible to tax @ 4%. The Ld. Advocate also argued that, if the impugned product is held liable for VAT otherwise; prospective effect may be granted to the determination order thereby considering the facts and circumstances of the case. He was thus finally heard on all the moot points.

04. SUBMISSION

The applicant has placed a written submission dt.16.01.2008 which is summarized as under:-

1. The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002, holding TIN No.27860410464 V w.e.f. 01.04.2006.
2. The applicant is a manufacturer of various types of printed material with a comprehensive range of products including prepaid telephone cards, banking cards, credit cards photo/non photo ID cards, magnetic strip/barcode/optical cards visa/master cards for credit/debit card application. Personalisation includes embossing. Security features include chip/magnetic stripe encoding and proven security options such as holograms.
3. The sequence of manufacturing process is also explained by the applicant.

Manufacturing activity of ID cards and Prepaid cards		Manufacturing activity of KD unit	
Shearing	Pre-press activity	Shearing	Pre-Press activity
Electrostatic Cleaning	Card Layout Design	Screen Printing	Design + Artwork
Offset or Screen	Make positive	Hole Punching	Make positive

Printing			
Sealing	Proofing	Blanking	Proofing
Lamination	Plate making/Screen Making	Forming	Screen Making
Punching	Offset Proofing	Molding	
First Inspection		Illumination Inspection	
Personalisation		Visual Inspection	
Final Inspection		Packing	
Packing		Despatch	
End		End	

Accordingly, the applicant submitted that the rate of tax payable on the impugned product be determined after considering the facts and circumstances of the case,. In order to verify the claim of the applicant, this office issued a letter dt.24.9.2008 and the following details were sought from the applicant:-

- A copy of contract entered into with M/s. ITZ Cash Card Ltd.
- Manufacturing process in detail.
- Evidence of trade/commercial parlance.
- Cause of dispute in clear terms.

In response to the letter, this office received a communication dt.14.10.2008 from the Advocate Shri P.V. Surte, the representative of the applicant , who stated the following on behalf of the applicant,-

1. We have already furnished to you a copy of the purchase order received from the customer. There is no separate contract entered into by the applicant and therefore the question of furnishing a copy of the contract does not arise.
2. The details of manufacturing process are already furnished along with the application. In case, they are not there, we enclose herewith a copy of the same.
3. The application has been filed in order to have a statutory clarification under section 56, irrespective of the fact that there is any dispute with the customer.

A letter was also issued to the buyer M/s. ITZ Cash Card Ltd. and information relating to the use of the card and its utility along with users manual, marketing literature, advertising material, technical and mechanical features, copies of contract entered with the applicant was called from them. However, till date, no response is received from M/s. ITZ Cash Card Ltd. (sole buyer of the product).

The information is therefore brought on the record from the web site of M/s. ITZ Cash Card Ltd. (www.itz.com). A perusal of the details obtained from the web site reveals that:-

- ITZ Cash Card is a multipurpose prepaid card.
- It facilitates online and on-mobile payments for a host of services.
- ITZ Cash enables users to perform a variety of transactions like Shopping; Travel Booking ; Mobile Top-ups ; utility bill payment; Entertainment Booking ; Book subscriptions; Gaming ; Donations and Charity ; Insurance ; Matrimonials ; Education.
- ITZ Cash Cards are available in various denominations from Rs.100/- to Rs.10,000/-.

- ITZ Cash Scratch Card has a 12 digit account number and a 4 digit password at the back of card. This account no. and password is necessary for online and on-mobile transactions.
- ITZ Cash Card is a full usage product and it is transferable and empowers the user(s) to do transactions any time-any where.
- If the buyer desires to use ITZ Cash Card for all applications in addition to essential and utility services then the user should sent hard copy of KYC form duly filled-up and signed to ITZ Cash Card Ltd.
- The ITZ Cash Card once submitted for payment for purchase will not be cancelled.
- ITZ Cash Card, account number, password, card number and intellectual property rights contained therein are exclusive property of ITZ Cash Card Ltd. (ICCL).
- ITZ Cash Card is a unique payment instrument available to all Indian consumers. It is a smart option for all, and the safest online and on mobile transaction.
- ITZ Cash Card collects and stores information from their customers, franchisees and end users who use the ITZ Cash Cards payment gateway service, as well as merchants, business partners, that ICCL have tied-up and acquired in the course of their business.
- As per the notification effective from 24 July, 2009, ITZ Cash Card can be used for payments such as Rail ticket booking; Telephone/Mobile Phone bills; Mobile prepaid top-up; Insurance Premium; Cooking Gas; ISP for Internet/Broadband connections; Cable/DTH subscriptions.
- If the card is having a balance of more than Rs.10,000/- then user(s) will be able to use card to a maximum limit of Rs.10,000/-.

From the above details it is evident that the card in question is nothing but a prepaid card having at the back of the card a 4 digit password and 12 digit account number covered with a scratch strip.

Let us see now how ITZ Cash Card is used. There are two options to pay (a) mobile power pay (b) web power pay- the user has to first choose the option. If the user chooses to pay on (a) mobile power pay, it is via SMS. For example, if the user has to give donation to Sidhininayak, the path of payment will be "Send an SMS to 57575 with the message text as shown below SVT-<Amount>-<Account number>-<Password>. If the user chooses to pay (b) web power pay say payment of voucher of Airtel then the procedure will be as under:-

1. Go to the ITZ Cash prepaid module and login with user name and password.
2. Select Airtel from the list of operators.
3. Choose the voucher that user would like to purchase and click on Buy Now.
4. Enter ITZ Cash account number and password and confirm payment.
5. Note down pin number and follow the instructions listed to use prepaid voucher.
6. If for any reason user is unable to view his pin number he can get a list of all pins purchased by him by logging in and clicking on Past Transaction Details.

It is contended by the applicant that the card in question is nothing but printed material covered under schedule entry C-76 of the MVAT Act. It seems that the main object of the card is to provide 12 digit account number and 4 digit password to the user, who by using the account number and password, can make payment of utility bills etc. Without the card number, account number and password, the user cannot effect online and/or on mobile transactions. Thus the card in question is the authorisation key. ITZ Cash Card Ltd. collects and stores information collected from their customers, franchises

and end users who use the ITZ Cash Card payment gateway. The applicant wants to know whether the 'ITZ cash cards' is printed material covered by schedule entry C-76 of the Maharashtra Value Added Tax Act, 2002 Act.

The question as to what can be categorized as a 'printed material' has been discussed and decided by the Supreme Court in the case of Metagraphs Pvt. Ltd. v. Collector of Central Excise, Bombay (106 STC 90) decided on November 20, 1996. In the said case, Supreme Court reversed a CEGAT decision and held that printed laminated labels fixed to refrigerators, radio, air-conditioners and television sets are printed matter. The Court observed that,-

.....The label announces to the customer that the product is or is not of his choice and his purchase of the commodity would be decided by the printed matter on the label. **The printing of the label is not incidental to its use but primary in the sense that it communicates to the customer about the product and this serves a definite purpose.** This Court in Rollatainers case [1994] 95 STC 556 (SC) ; (1994) Supp 3 SCC 293 held that "what is exempt under the notification is the 'product' of the printing industry". The "product" in this case is the carton. The printing industry by itself cannot bring the carton into existence. Let us apply this above formula to the facts of this case. The product in this case is the aluminium printed label. The printing industry has brought the label into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the labels in question are the products of printing industry. It is true that all products on which some printing is done, are not the products of printing industry. It depends upon the nature of products and other circumstances. Therefore the issue has to be decided with reference to facts of each case. A general test is neither advisable nor practicable. We are, therefore, of the opinion that the Tribunal was not right in concluding that the printed aluminium labels in question are not "products of printing industry".

In making the aforesaid observation, the Supreme Court followed another Supreme Court judgment in the case of Rollatainers Ltd. and others vs. Union of India and others (95 STC 556) decided on July 14, 1994. In the said case, the Supreme Court had to decide whether printed cartons manufactured by the appellant's company are products of the printing industry. The Supreme Court decided that, simply because, there are expensive prints on the cartons such printed cartons would not become the products of the printing industry. It made the following observations.

..."The printing industry has advanced to such an extent that one can print on almost anything such as glass, metal or synthetic base. This does not mean that very material on which printing work is done becomes a product of the printing industry. An ordinary carton without any printing on it is a completed product and undisputably the product of the packaging industry. It does not cease to be the product of the packaging industry as and when some printing is done on the carton. To a common man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton.

What is exempt under Notification NO.55/75 dated March 1, 1975, issued under rule 8 of the Central Excise Rules, 1944, is the "product" of the

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printing industry. The printing industry by itself cannot bring the carton into existence. Any amount of fancy printing on a card-board would not make it a carton. In the process of manufacturing the printed cartons, the card-board has to be cut printed, creased and given the shape of a carton by using paste or gum. Simply because there are expensive prints on the carton such a printed carton would not become the product of the printing industry. It remains the product of the packing industry; and it not, therefore, exempt under the notification in question.....

In this decision, the Supreme Court endorsed the decision of the Karnataka High Court in the case of the appellant (32 ECC 321). It quoted with approval the following :

“....In our view, it would be an extreme proposition to hold that all products on which some printing is done is a product of the printing industry. In the event, printed cloth would be a product of the printing industry and not of the textile industry. A metal can with printed material on it will similarly be a product of the printing industry and not the packing industry. The same can be said of card-board packet and even wooden boxes over which some printing is done to identify the goods or its manufacturer. In our view, the mere fact that something is printed on a product by itself does not make it a product of the printing industry. A carton is a carton and has only one use, namely, of packing a product to be sold in the market. The mere fact that something is printed on it does not change its essential nature or use.

Both the Supreme Court judgments give a fair idea as to what should be considered as printed material.

- **The printing should not be incidental to its use but primary in the sense that it communicates to the customer about the product and this serves a definite purpose.**
- It is true that all products on which some printing is done are not the products of printing industry. It depends upon the nature of products and other circumstances.
- The printing industry has advanced to such an extent that one can print on almost anything such as glass, metal or synthetic base. This does not mean that very material on which printing work is done becomes a product of the printing industry.

With these tests in mind, I shall proceed to decide the question. The schedule entry under consideration in the present case is entry C-76.

C-76	Printed material including annual reports, application forms, account books, calendars, diaries, catalogues, race cards and publications which mainly publicise goods, services and articles for commercial purpose.
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The ITZ Cash Card is a pre-paid card which enables users to perform a variety of transactions like shopping, bill payments, donation etc. I have seen the products in question. The front of the product gives the name of the card and the denomination whereas the back of the card gives the conditions, the printed value of the card and the validity. The card carries the account number and the password of the user which is hidden under a strip. The user has to scratch the strip to get the account number and the

password. The card is akin to other visiting cards or identity cards which through the print on them deliver certain important information to the user of the card. The printing on the card is primary in the sense that it communicates to the customer, the account number and his password and this serves a definite purpose. In the case of Rollatainers Ltd.(cited supra) the product was a carton and the printing on it was incidental because the printing industry did not bring carton into existence. The case in the present issue is entirely different in the sense that the printing has brought the ITZ Cash Card into existence. It is true that, all products on which some printing is done are not the product of the printing industry- the classification depends upon the nature of product and other circumstances. In the present case, the printing is not done on some product which is of independent existence of its own. The printing itself carries a definite value and the card has been brought into existence by the only act of printing. It is not that the printing is not incidental to its use but the printing is the main purpose of the ITZ Cash Cards. I, therefore feel that the product qualifies to be the printed material **in the hands of the printer** and is covered by schedule entry C-76.

An important reference should also be made to chapter heading 49 of the Harmonized Commodity System. Chapter 49 covers printed books, newspapers, pictures and other product of the printing industry. Sub heading 4911 of the Chapter covers the following products amongst others,-

- Tickets for admission to places of entertainment.
- Tickets for travelers and other similar tickets.
- Lottery tickets.
- Scratch cards.
- Raffle tickets.

Traveller tickets, cinema tickets, lottery tickets are bought because of the printing on it. They denote certain information to the users of the cards which is of use to him. In this sense, the printing is not incidental to the main use of the product. This heading 4911 excludes 'smart cards' as the 'smart cards' have magnetic strips and carry chips. The present product does not carry any micro processor chips or magnetic strips. Therefore, it will not get excluded by Chapter heading 4911.

I would also like to refer to the decision of the Central Excise Tribunal in the case of Sai Security Printer Ltd. (199 ELT 0121). In the said case, the Central Excise Tribunal held that lottery tickets, pass tickets, cheque books, demand drafts and MTNL VCC Trump Cards are products of the printing industry and are covered by Chapter 49 of the Central Excise Tariff Act which covers printed matter. From the aforesaid list of products, the 'MTNL VCC Card' is similar to the ITZ Cash Cards where the MTNL VCC Cards holder after paying a certain amount is entitled to some talk time on the MTNL Line. The said card also carries a card number and a PSN number. The Card also does not have a magnetic strip and what is important is the card number which has to be dialed every time a call is to be made. Such 'cards' were held as products of the printing industry. Therefore, the judgement is applicable although the schedule entries are different- the difference is not relevant as in both the Acts the question to be decided is similar- whether impugned products are printed material.

05. With reference to the above deliberations I hold as follows:-

ORDER

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

No.DDQ-11-2005/ Adm-5/100/B-1

Mumbai,dt.07.12.09

The sale of the product "ITZ Cash Card" by the applicant M/s. M. Tech Innovations Pvt. Ltd. is covered under schedule entry C-76 of the MVAT Act, 2002, liable to tax @ 4% being 'printed material' in the hands of the printer.

(Sanjay Bhatia)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.