

Read 1) Application dt.07.08.07 by M/s. Opulent Auto Care Pvt. Ltd. holder of TIN No. 27610389116V.
2) This office letter dt.15.03.08 calling the necessary details.
3) Communication dt.08.04.2008 from the applicant.
4) This office letter dt.12.9.08, 26.9.08, 4.11.08, 6.11.08, 8.12.08, 11.12.08, 20.12.08, 7.1.09, 22.1.09 calling the applicant for hearing.
5) Communication dated 22.9.08, 17.12.08 from applicant.
Heard - Shri Satyaprakash Iyer, Managing Director attended the hearing.

PROCEEDINGS

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

No. DDQ 11/2007/Adm-3/44/B-1

Mumbai, dt.26.08.2009

An application is received from M/s. Opulent Auto Care Pvt. Ltd. No., of Flat no. 9, Shrinivas Classic, 3rd floor, Above Corporation Bank, Baner Road, Pune - 411 045 requesting determination of the rate of tax applicable to the product "Sun Control Film" sold under invoice no. A5554 dt.27.07.2007.

02. FACTS OF THE CASE

The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002 [MVAT Act,2002] and the Companies Act. The Registration Certificate is obtained as an importer, reseller and works contractor. The company is engaged in the business of Sales & Services of Car Corrosion Protection which consists of polishing of car. Accordingly the company is collecting and paying taxes @ 12.50% under MVAT Act where direct sale of polishing pack is done & in case of service i.e. actual polishing works is involved, pays taxes under Works Contract Act @ 12.50% after deduction u/r 58 for the labour charges incurred. The company has recently started dealing in a new commodity called "Sun Control Film" which is imported from outside India & is sold in Maharashtra as well as out of Maharashtra. The applicant has further informed that he is in the process of entering into the job work of fixing the said film on motor vehicles. As per the applicant, the said transaction is covered under Works Contract and hence after deduction of labour charges u/r 58 of the MVAT Act Rules 2005, the rate of tax will be 4% under said Works Contract. The features of the impugned product as outlined by the applicant are as follows :

- The Sun Control Film is used to reduce energy bill in Architectural building and also to protect the employees/occupants from scorching heat, UV rays etc.
- The sun films are largely used to build green buildings to bring efficiency and to save on electricity cost.

- It can also be used for residential and industrial application.
- The same is used for glasses in automobiles to reject infrared and UV rays.

03. CONTENTION

It is contended that the Sun control film is an industrial input as it is covered by the Excise Tariff heading No. 3920 [3920.69.19 : "Sun and/or dust control film"] which is notified for the purposes of the schedule entry no. C-54 of the MVAT Act, 2002. The applicant has prayed as follows :

1. We request to determine u/s 56(1) whether the rate of tax on sales of Sun Control Film is 4% or not.
2. We further request that the liability may be protected u/s 56(2) of Maharashtra Value Added Tax Act, 2002 accordingly if the transaction is not covered under the above referred notification, any transaction of sale during the pending of the DDQ may kindly be protected and the DDQ may be given prospective effect.

04. HEARING

The case was taken up for hearing on dt.27.01.2009. Shri Satyaprakash Iyer, Managing Director attended the hearing. He submitted that the Sun control film is an industrial input as it is covered by the Excise Tariff heading No. 3920 which is notified in schedule entry no. C-54 of the MVAT Act, 2002. He stated that the product is used on buildings/cars for protection against UV Rays.

05. OBSERVATION

I have gone through all the facts of the case. The issue before me pertains to the determination of the rate of tax on the product "Sun Control Film". The claim of the applicant is that the product is covered under the Schedule Entry C-54 for industrial inputs which reads as follows :

Industrial inputs and packing materials as may be notified from time to time by the State Government in the Official Gazette

It can be seen that the above entry calls for a notification. The schedule entry notifies certain excise headings & the products covered by them as industrial inputs and packing material. The notification is based on the classification of products under the Central Excise Act. Hence, a look needs to be had at the evidence in respect of the Central Excise heading applicable to the product. The applicant has submitted a sale bill dt.27.07.2007 regarding the sale of the product "Front Glass 70st Filming - Indigo". The applicant has submitted that the product mentioned in his sale invoice dt.27.07.2007 is the same which is mentioned as "HUPER KLAR 70' ST 60" X 100 FT"

[AHI0043 (Polyester Film)]” in the Bill of Entry for Home Consumption No.715188 dt.12.10.2006 received by the applicant for the import purchase of the applicant [Commercial Invoice - Order No. 0000SF324 dt.19.09.2006]. The Custom and Central Excise Tariff as appearing in the Bill of Entry in respect of the product “HUPER KLAR 70’ ST 60” X 100 FT” which is a sun control film is 39206999. In the determination application, the same was mentioned as 3920.69.19. I would place reliance on the evidence placed before me and proceed with the same.

Now, the applicant has claimed that the product is covered by the notification issued for the purposes of the schedule entry C-54. Hence, I need to ascertain whether the said heading finds a mention in the notification for industrial inputs. Further, the description against the heading under Central Excise needs to be compared with the description notified for the purposes of the schedule entry C-54. It is seen as follows :

Heading	Central Excise [prior to 2005-2006]	Notification dt.01.04.2005
3920	Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not.	Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not.
	Central Excise [For 2005-2006]	Notification dt.01.09.2005
	Other plates, sheets, film foil & strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.

Now the notification for the schedule entry for industrial inputs or for that matter any schedule entry under the MVAT Act, 2002 which is related to the classification of products under the Central Excise Act, was brought into effect from 01.04.2005 when the Maharashtra Value Added Tax Act, 2002 came into force. However, the notification dt.01.04.2005 being drafted before April 2005 is based on the Tariff classification as existing for the years 2003-04/2004-05 i.e prior to 2005-06. After the new classification for 2005-06 came into publication, the notification for industrial inputs was amended accordingly. Hence, I have taken care to reproduce the corresponding description under Central Excise during both the notifications.

Coming back to the discussion as regards the description as appearing under the referential legislation and as appearing for the purposes of the notification under the MVAT Act, 2002, it can be seen that both the notifications have descriptions similar to the ones appearing under the then Central Excise Tariff on which the notifications were based. As per the rules of interpretation as appearing in the notification, where the

description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purposes of the said tariff under that heading or sub-heading will be covered by the scope of the notification. Thus, all the commodities covered by the Excise Heading 3920 have been sought to be covered by the notification for industrial inputs. The applicant has informed that the product is covered by the Excise Heading 39206999. The relevant portion of the Excise Heading 392069 could be seen as follows :

3920 69 -- *Of other polyesters :*
 --- *Packaging film :*
 3920 69 11 --- Rigid, Plain
 3920 69 12 --- Flexible, Plain
 3920 69 19 --- Other
 --- *Sun and/or dust control film :*
 3920 69 21 --- Rigid, plain
 3920 69 22 --- Flexible, plain
 3920 69 29 --- Other
 -- *Other Film :*
 3920 69 31 --- Rigid, plain
 3920 69 32 --- Flexible plain
 3920 69 39 --- Other
 -- *Other :*
 3920 69 91 --- Rigid, plain
 3920 69 92 --- Flexible, plain
 3920 69 99 --- Other

From the above, it can be seen that the heading 39206919 is *Sun and/or dust control film* as rightly informed by the applicant. The bill of entry submitted by the applicant shows clearance under excise heading 3920.69. Thus, the heading 392069 is for *Sun and/or dust control film*. The entire heading 3920 having been covered by the notification, it goes without saying that all the sub-headings of that heading are thereby covered. Hence, the excise heading applicable to the applicant's product is covered by the notification. However, as mentioned earlier the notification is for the purposes of the schedule entry for industrial inputs and packing material. Now, "***industrial inputs***" and "***industrial packing materials***" is not a terminology under the Central Excise Act. It is a conscious decision of the Government of Maharashtra to introduce such an entry so as to provide the needful impetus to the industry i.e the industrial sector. Hence, we will not find a Chapter under the Central Excise Act devoted to industrial inputs as the classification under Central Excise is on the basis of the different types of GOODS. It is the claim of the applicant that his product is an industrial input. Therefore, it needs to be ascertained whether the applicant's product would classify for coverage under the

expression “*industrial inputs*”. Industrial inputs would mean those raw materials or components or parts which go into the manufacture of industrial goods. The product to qualify as an input should be an input to the making of the final product. In the determination order in the case of M/s. Samruddhi Industries [No.DDQ-11/2003/Adm-5/40/8-8, dated February 20, 2004], the then Commissioner of Sales Tax had an occasion to deliberate on the matter. It was observed therein that “*Since the term 'Input' is qualified as 'Industrial Inputs' in the notification it does not include all input but only inputs of an industry. The very qualification for judicious interpretation shall equally be applicable to 'Packing Material' since they are placed together in conjunction by the word 'and'. As such the Entry C-I-29 covers Industrial Input and Industrial Packing Materials alone in it.*” The schedule entry for industrial inputs & packing material was introduced under the erstwhile Bombay Sales Tax Act, 1959 with an intention to keep the industrial inputs at a rate equivalent to the Central Sales Tax Rate. Even under the present MVAT Act, 2002, we have the said entry for the special purpose of taxation of Industrial Inputs and Packing Materials at a lower rate of 4%. In the decision in the aforecited determination order, certain products were held as not being industrial inputs as they were applied for household use. The aforementioned determination order was upheld by the Hon. Tribunal in its decision reported in 32 MTJ 226.

In the present case, it is seen that the product finds use in automobiles/buildings to reject infrared and UV rays and thereby it protects from the heat of the sun. The brochure of the company “HUPER OPTIK” from whom the applicant imports the sun control film advertises the product as follows :

"...Huper Optik films have been successfully installed in many prestigious projects not only in the architectural and automotive markets but as well as in marine sectors. Our success today is evidenced by the strong basis of satisfied customers built across the global markets who have benefited from the excellent heat rejection performance of the Huper Optik films which block out the infrared and ultraviolet rays yet clarity for their windows is not compromised. They no longer need to worry about their glass windows admitting the unbearable heat and glare from the sun, with Huper Optik films they could enjoy greater comfort, energy and financial savings and even better safety and security."

In terms of the product's use in ships/vessels, automobiles and hotels, the clients of the company have given the following opinions about the product :

Ships – “*Huper Optik Ceramic films reduces heat gain in the interior while a clear view for navigation was achieved.*”

Hotels – “*With Huper Optik Ceramic films, the patrons no longer felt the discomfort sitting near the window caused by the heat.*”

Automobiles - "We feel our customers are increasingly seeing the value of Huper Optik ceramic films; a product that not only protects them from the sun but provides a cooler interior that enhances their driving comfort."

From the above uses to which the product can be put to, it can be seen that the product can be best described as an aid or accessory which provides comfort and luxury. It is not an input which is essential to the manufacturing of a product. It cannot be termed as a 'raw material' or an 'input' from which a finished product can be prepared. An input is one without which a product cannot be produced. The present product is not one without which any product cannot be produced. The automobiles/buildings in which the impugned product finds application can be manufactured/built without using the said product. The manufacturing process will not halt or be interrupted by the non-use of the product. Take for instance, the use of the product in the automobile industry. When a car/motor vehicle comes out of the factory, it is not the case that the impugned Sun Control Film is found pasted to the windows or for that matter the glasses fitted in the cars. The impugned films are pasted on glasses or window keeping in view the comfort of the driver & passenger therein. Thus the impugned product is fitted later on to the car if the person desires comfort and protection from the heat of the sun. In such a case, the product would more aptly be referred to as an accessory of the motor vehicle than an input to the automobile industry. Now the schedule entry C-54 does not contemplate the inclusion of accessories. The prime consideration for coverage in the entry is that the product should be an input to an industry. The basic property of the product is that it provides protection against the infrared and ultraviolet rays of the sun. From this property, one can easily make out that the product does not have a use in the manufacturing of a product, let alone industrial products. The product is a shield which is to be applied or fitted on the buildings, cars so as to get the needful protection from the sun. The product is certainly not for such types of products that the schedule entry for industrial inputs has been founded. I have reproduced hereinabove the reactions of the customers using the product. All the reactions can be understood to mean that the patrons of the product view the product as providing them a satisfaction. The product is treated by them as not a necessity but as an additional comfort. And if this is so the product cannot in any circumstances be covered by an entry which is specifically introduced to

include industrial inputs which are indispensable for the manufacturing of any product. This would be contradictory to the intention behind the introduction of the entry. The then Hon. Finance Minister in his Budget Speech had the following to say about the introduction of the schedule entry C-I-29 under the then BST Act, 1959 :

"The Hon. Members are aware that in Maharashtra the local manufacturers are entitled to claim set-off of the Sales Tax paid in excess of 3% of the purchase price of Raw Materials and Packing Materials. The present rates of tax on the most important of the Raw Materials and Packing Materials are fairly high being of the order of the 13% ... This naturally induces manufacturers to purchase the same commodity from other States. I therefore propose to reduce the rate of Sales Tax of specified Inputs and Packing Materials to 4%. The list of Inputs and Packing Materials will be prepared by the reference to the Central Excise Tariff.

As observed by me earlier, the schedule entry is for "industrial inputs and packing materials". The schedule entry is very specific in its import. It is not for all inputs and packing materials but inputs and packing materials to industry alone. Hence, the product has to first qualify for coverage by the terminology used in the schedule entry. If it is covered by the description used for the purposes of the entry, then it needs to be ascertained whether it is specified as a notified "industrial input and packing material" in the notification issued for the purposes of the schedule entry. The notification is for the purposes of the schedule entry and the schedule entry is the outcome of a conscious and deliberate decision of the intention of the Government reflected in the Statute and the Schedules appended to the said Statute. Hence, this should put to rest any counter argument that the product having been covered by the notification should be held as covered by the schedule entry. The intention behind introduction of the entry, the characteristics of the product, the use of the product and the common parlance understanding of the product need to be taken into consideration as they assume significance in the interpretation of the product vis-à-vis the schedule entry. Thus, considering the intention to introduce the schedule entry C-54 is to give impetus to the industry when it specifies certain goods to be of the nature of industrial inputs, the goods presented for determination do not appear to fit into the concept of industrial inputs as envisaged by the schedule entry C-54 of the MVAT Act, 2002. There being no specific schedule entry covering the applicant's product, the same would be covered by the residuary schedule entry E-1, thereby taxable @12.5%.

06. PROSPECTIVE EFFECT

It is seen that the applicant has requested for prospective effect. The request is made specifically with respect to the transactions of sale entered into by the applicant

during the pending of the DDQ. The applicant has requested that if the transaction is not covered under the above referred notification then any transaction of sale during the pending of the DDQ be protected and the determination be given prospective effect.

The prayer of the applicant needs to be weighed in the light of the provisions under the Act as also the facts of the case. It needs to be seen whether there truly existed a statutory misguidance. When the applicant is himself claiming that the product is covered by the entry for industrial inputs, he is aware of the fact that the said entry is not for “**all inputs**” but only for “**industrial inputs**”. Given the characteristics of the product, the applicant should have understood that the product cannot be used as an input in the industries but at best could fall within the category of accessories. When the applicant claims that the product is used as protection against the scorching heat, UV rays etc., he is certainly aware of the fact that that the impugned product does not find use in the manufacturing process of the product but is used as an aid to secure comfort from the use of the product in which it is fitted. The advertising material submitted by the applicant itself highlights the luxurious base of the product. The claim of the applicant that the product is an industrial input was based on self assessment of the facts and and is accordingly inappropriate. There were no judicial pronouncements on which the applicant could have said to be relied upon. The position of the law was very clear and there wasn't any scope for statutory misguidance of any kind. I have elaborately dealt with the issue and it can be seen from the preceding paras that there did not exist any kind of statutory misguidance.

I need herein to deal with an issue which is fairly obvious even though the same has not been argued by the applicant. It is seen that the product is covered by the notification issued for the purposes of the schedule entry. Hence, one may argue that he should get the benefit of doubt. There may be instances when a particular heading is covered by the notification issued for the purposes of any entry, however considering the import of the entry, any particular good covered by the heading and thereby the notification does not deserve to be placed in the entry. Any particular Excise Heading covers a number and variety of articles. It would not be possible and practicable for the Legislation to identify all such possibilities wherein some goods are not covered by the

schedule entry but are covered by the heading which is sought to be included. In such circumstances, the words used for the purposes of the schedule entry should be looked into and accordingly ascertained whether going by the nature of the product, the same should be included or excluded. The schedule entry comes before the notification and hence, in circumstances where the exclusion of certain products has not been provided for, the following legal maxim applies - *Derivativa potestas non potest esse major primitiva* - **The power which is derived cannot be greater than that from which it is derived**. Since the schedule entry itself bars entry to the product, the inclusion in the notification does not act otherwise.

Nevertheless, it is a point of argument, as in the instant case, that the excise tariff heading under which the applicant's product gets covered has been included in the notification issued for the purposes of the schedule entry. It is specifically mentioned in the Rules of Interpretation for the purposes of the notification that :

Note.-(3) Subject to Note 2, for the purpose of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purposes of the said tariff under that heading or sub-heading will be covered by the scope of this notification.

It seems that the applicant has not given a thought to the import of the schedule entry. He is content applying his own interpretation to the schedule entry. Ignorance of the law is not an excuse but there are cases wherein understanding of the law by two persons may not be the same. It is on these counts that I am inclined to consider the request of the applicant. As mentioned earlier, the applicant has requested that the transactions effected by him during the pendency of the DDQ application be protected. On the basis of the grounds discussed above, I am of the opinion that the applicant's request should be granted. Accordingly, the determination would take effect from the date of this order. The transactions of sale during the pending of the DDQ are herewith protected and the determination is given prospective effect.

07. In view of the deliberations held hereinabove, it is ordered as follows :

ORDER

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

No. DDQ 11/2007/Adm-3/44/B-1

Mumbai, dt.26.08.2009

The sale of "Sun Control Film" evidenced through invoice no. A5554 dt.27.07.07 is herewith determined to be covered by the schedule entry E-1 of the MVAT Act, 2002 thereby attracting tax @ 12.5%. For reasons as discussed in the order, the applicant's prayer for prospective effect is considered such that the determination would take effect from the date of this order. The transactions of sale during the pending of the DDQ are herewith protected and the determination is given prospective effect.

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