

Read :- 1) Application dt. 20/06/2008 from M/s Ronak Associates, holder of VAT R.C. No. 27370379742V, under the Maharashtra Value Added Tax Act, 2002.

Heard :- Shri Nitin Shah, C.A.

PROCEEDINGS

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

No. DDQ-11-2008/Adm-3/31/B- 4

Mumbai, dt.31.1.09

A question for determination has been put forth by the applicant holding R.C. No. 27370379742V and bearing address at 363/4, Opp. J.M. Temple, Behind Prithvi Apartment, Shivaji Nagar, Pune-411005, on the rate of tax on 'Rainbow Slate M-701' sold vide invoice No.10 dt.16.6.2006.

2. FACTS OF THE CASE

The applicant is a registered dealer under Maharashtra Value Added Tax Act holding R.C. No. 27370379742V carrying on the business of manufacturing and selling 'rainbow slate' as well as other educational aids. The applicant has contended that the "Seven Colours Rainbow Slate" is used by children for practicing and thereby improving their handwriting. It is stated that it also contains self teaching aids like the Alphabet, Numerals, Clock, cm Scale and seven rainbow colours. It is claimed that the 'Rainbow slate' is made of eco friendly wood & thus saves paper. It is claimed that it helps to improve handwriting by a scientific method, through systematic training & constant practice.

The features of the product are given below:-

Features :

- Self teaching aid, Alphabet, Numerals, Clock, c.m. Scale and Seven rainbow colours.
- Unbreakable
- Stain proof
- Easy to Clean: Write with felt tip only and then just wipe clean.

It is further claimed that it is an innovative slate introducing children to the first step towards education as it contains the alphabet and many other concepts. The slate is meant for children in the age group of two to ten years. It is used by children for writing, understanding and improving handwriting. The letters/alphabet can be traced with the help of a felt pen and can be wiped off easily. It is stated that apart from English (capital and small letters) and Marathi alphabet arranged in seven colours of the rainbow, the laminated slate also introduces little children to various concepts like numbers, colours, scale, time, national flag, and directions. It is claimed that the method of introducing the small children to the alphabet which is adopted in Rainbow slates is found way back in Ancient Indian Script.

It is stated that with the advancement of science and technology, the slates made in good old days of stone are replaced with slates made of plastics and other material. The applicant has further claimed that the 'Rainbow slate' is also made of Eco friendly wood & thus it saves paper. The applicant has also given a brochure with the 'Rainbow slates' explaining how to make an effective use of the slate. It is informed that the product manufactured by applicant is purchased not only by individual customers, who buy it for their little children but also by the schools giving primary education for learning alphabets, for writing the said alphabets. In support of this, the applicant has

enclosed the copies of the letters received from some of the schools as well as individuals who have given orders for the slates after appreciating the same.

It is argued that the product is bought and sold as a slate. It is argued that the product is advertised as such the news papers have recognized it as slate and therefore considering all these aspects, the 'Rainbow slate', is covered by entry number 44 of schedule A appended to MVAT Act 2002.

For the above contention, the applicant has relied on the DDQ No. 1174/224/B-22 Dt. 28/10/74 where in it is held that 'Alphabet Slates' are covered by the then entry A-45(a). Considering above facts and the DDQ, the applicant has submitted that the 'Rainbow Slate' sold be held as covered by entry no. 44 of schedule A.

03. HEARING

The case was fixed for hearing on 07.10.08. Shri Nitin Shah, C.A. attended on behalf of the applicant. He stated that product manufactured by the applicant is called 'Rainbow Slate'. According to him, the product is covered by Schedule Entry A-44 and is tax free. He informed that the slate is made of wood. He referred to the determination orders in the case of M/s Creative Unit (Order No. DDQ-1171/69/B-30 dt. 19.06.1971) in which slate made from plastic powder were held to be covered by the Schedule Entry A-45(a) and thereby, were tax free. He further referred to the determination order passed in the case of M/s Shubhangi Industries (Order No. DDQ-1178/Adm-5/19/B-4 dt. 26.04.1978) in which 'Shubhangi pati' which was a slate made from plastic was held to be covered by Schedule Entry A-45(a) which covered slates of all kinds. Determination Order passed in the case of M/s Speedage Corporation (Order No. DDQ-1180/Adm-5/65/B-14 dt.22.05.80 in which apple slate which was a disk made of plastic powder was held to be covered by Schedule Entry A-45(a) was also referred.

04. OBSERVATIONS

I have gone through the submissions of the applicant. I have also seen the sample of the product. It is seen from the sample that the product is made of wood and contains a number of features. The slate is in seven colours with Self teaching aids like alphabet, numerals, clock etc. The letters or the figures on the slate are to be written on with a felt tip pen and then wiped clean. The question raised by the applicant is whether the slate is covered by Schedule Entry A-44 of the Maharashtra Value Added Act. The Schedule Entry under consideration is reproduced as follows:-

<i>Schedule Entry</i>	<i>Description</i>
A-44	Slate and slate pencils but not including writing boards.

It is seen from the Schedule Entry that it covers 'slate'. The question therefore is whether the 'Rainbow Slate' is covered by the expressions slate in which case it would be exempted from tax. While pleading the case, the applicant had referred to certain determination orders in which different varieties of slates made from plastic in different shapes were held to be covered by the Schedule Entry A-45(a). These determination orders would not be a much help to the applicant or would not in any way strengthen his case as the entry prevalent during these determination orders and the entry under consideration now are different. The Schedule Entry A-45(a) was the schedule entry under consideration when the past determination orders were passed and the entry is as follows :

<i>Schedule Entry</i>	<i>Description</i>
A-45(a)	Slates of all kinds and slate pencils: chalk sticks and crayons:foot rules : exercise and drawing books :lead pencils : mathematical instrument boxes sold at a price not exceeding three rupees each and colour boxes sold at a price not exceeding two rupees each.

It can be seen that the Schedule Entry A-45(a) is markedly different from A-44 in the sense that while the form covers all kinds of slates the latter covers only slates. Therefore, the matter would have to be decided without any reference to the past determination orders on the merits of the case itself.

The Entry A-44 exempts 'slate and slate pencils' and they are placed under Schedule A with a purpose. All products under Schedule-A are products which are used by the general classes and are such goods which are of local importance. Therefore, the 'slate' is exempted as it is widely used by the small children for education purposes. A writing slate as defined in the 'Wikipedia' as **a piece flat material used as medium of item**. It further describes 'Slate' as a fine-grained, foliated, homogeneous, metamorphic rock derived from an original shale-type sedimentary rock composed of clay or volcanic ash through low grade regional metamorphism. One of the uses of this 'slate' is the 'writing slate'. The Wikipedia says the following about 'writing slates'.

In the 1800s, writing slates were made of slate, which is more durable than paper and was cheap at the time when paper was expensive. It was used to allow children to practice writing. Thin slabs of slate, typically three inches by five (roughly 9 x 12 cm), were also bound into "slate books" for adult use in workplaces.

Slate can be written on using a slate pencil. This is a rod made of soft slate,soapstone, or pressed clay, which makes a thin white line on the slate. Chalk can also be used. The writing can be wiped off with a soft cloth.

Writing slates, although not made of the rock, are still used:

- Scuba divers carry plastic slates and pencils to communicate with other divers, to record facts underwater or read pre-dive plans.
- Proprietary writing slates which protect young children and their clothes from the damage and discolouration potentially caused by paint, pencils and pens are used as toys or educational items.

From the above, it is seen that writing slate made of slate though still in use does not enjoy as prominent a place as earlier. They are fast getting replaced by writing slates made of other materials. If the line of thought is followed that the 'slate' mentioned in schedule entry A-44 envisages only those slates which are made of 'slate stone' then 'slates' made from other material would not be covered of this entry. However, I do not feel it necessary that the entry should be restricted to slates made from slate stone, especially because of the fact that such slates are going out of use and increasingly getting replaced by slates made from other materials like plastic wood etc. The traditional slate is giving way to slates made in different sizes and shapes with has added features on them, Originally, the purpose of including 'slate' in the entry is to exempt the traditional slates which are made of slate as such slates

are cheaper and used by the general classes. However, though now the 'slates' come in different sizes and are made of different materials, they would come under entry A-44 as they are the ones which are prominently in use now. They are used by school children. If the entry is restricted to 'slates' made of stone, the entry might become obsolete as slates made of slatestone are not used popularly.

The other reason why the slates made of the other product would come in schedule entry A-44 is the peculiar wording of the entry. If the entry had been restricted to only slates then there was no need of excluding "Writing Boards" from it. If the intention was very clear that only those slates which are made of slate stone is meant to be included then there was no need of a specific exclusion to 'writing boards'. It might be interpreted that when writing boards are specifically excluded, it means that all the other variants of slate are implicitly included in it.

For the above reasons, I hold that these 'Rainbow Slate' is not covered by Schedule Entry A-44.

05. In view of the above deliberations I hold the following:

ORDER

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

No. DDQ-11-2008/Adm-3/31/B- 4

Mumbai, dt.31.1.09

The sale of 'Rainbow Slate' sold through Invoice No. 10 dt. 16.06.06 is covered by Schedule Entry A-44.

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