

Read - 1. Application dt. 27.5.2005 by M/s. Vipin Nandlal & Sons.

2. Written submission by the applicant dt. 14.2.2006.

Heard - Smt. Bindu Shah, C.A. attended on behalf of the applicant on 2.12.2008.

PROCEEDINGS

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

No. DDQ 11/2006/Adm-3/9/ B- 1

Mumbai, Date:23.01.09

An application is received from M/s. Vipin Nandlal & Sons carrying on business activity from 1303, Giriraj, Neelkanth Complex, Rajawadi, Road No.7, Ghatkopar (E), Mumbai - 400 077 and having additional place of business at 248/50, Samuel Street, 41, Daryasthan Street, Vadgadi, Mumbai - 400 003, requesting determination on rate of tax on Olibanum (Dhoop).

02. FACTS OF THE CASE

M/s. Vipin Nandlal & Sons is engaged in the business of trading in Olibanum (Dhoop). It is stated by the applicant that generally they purchase goods locally or import the goods from out of Maharashtra and sell the product in same form to their customers. The applicant has submitted sale invoice bearing Sr. N. 91 dt. 15.7.2005 for the commodity having description 'Essence / Dhoop'. The applicant has submitted that the issue is for the limited period of 1.4.05 to 31.1.06 as with effect from 1.2.06 the word 'Dhoop' was specifically included in the schedule entry C-52. The question is whether the product would be covered by the entry C-52 for the period 1.4.05 to 31.1.06 and it is the contention of the applicant that the absence of the term 'Dhoop' should not make any difference and the product would be covered by the entry C-52 for the period 1.4.05 to 31.1.06.

03. HEARING

The case was fixed for hearing on 2.12.08. Smt. Bindu Shah attended on behalf of the applicant. She stated that it is her contention that 'Dhoop' should be taxable @ 4% under schedule entry C-52 for the period 1.4.05 to 31.1.06. She informed that "Dhoop kathi" has a bamboo stick inside and 'Dhoopbatti' contains gum/ 'Dhoop' has to be put on coal to be lit.

04. CONTENTION:-

It has been contended by the applicant that the impugned product covers under schedule entry C-II-36(1) under BST regime w.e.f. 1.1.2000 and from 1.2.2006 the product is covered under schedule entry C-52 appended to MVAT Act 2002. The schedule entry in the repeal Act and MVAT Act reads as under:

Act	Schedule Entry	Item	Rate of Tax	Date of Effect
BST Act	C-II-36(1)	Dhoop, dhoopbatti	4%	w.e.f. 1.1.2000 to 31.3.2005
BST Act	C-II-36(1)	Agarbatti	8%	w.e.f. 1.1.2000 to 31.3.2005
MVAT Act	C-52	Incense sticks commonly known as agarbatti, dhoopkathi or dhoopbatti	4%	w.e.f. 1.4.2005 to 31.1.2006

MVAT Act	C-52	Incense sticks commonly known as agarbatti, Dhoop, dhoopkathi or dhoopbatti	4%	w.e.f. 1.2.2006 to date
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The applicant further contended through his letter dt. 14.2.2006 that he has no query regarding the rate of tax on the impugned product for the period from 1.2.2006 i.e. after substitution of words "Dhoop, dhoopkathi or dhoopbatti" for the words "dhoopkathi or dhoopbatti" in entry C-52. The applicant has sought determination for the impugned product for the period 1.4.2005 to 31.1.2006.

The applicant has also contended that if it is decided that the item 'Dhoop' falls under residual entry liable to tax @ 12.5%, they should be given the benefit of waiver on the line of circular no. 34 T of 2005 dt. 26.10.2005.

05. OBSERVATIONS:-

I have carefully gone through the submission of the applicant. As desired by the applicant the period of determination of rate of tax on the item Dhoop is restricted to the period 1.4.2005 to 31.1.2006 i.e. till the amendment to schedule entry C-52 when the word 'Dhoop' was inserted in the schedule entry.

Prior to 1.2.2006, the schedule entry C-52 of MVAT Act, 2002 read as "Incense sticks commonly known as agarbatti, dhoopkathi or dhoopbatti" i.e. during the period 1.4.2005 to 31.1.2006, the schedule entry was restricted for the commodity agarbatti (incense sticks), 'dhoopkathi' and 'dhoopbatti'. The question would be whether the 'Dhoop' would be covered by the schedule entry as it does not occur in the entry for the period 1.4.2005 to 31.1.2006.

The wordings of the entry are such as that the scope of the entry is limited to only agarbatti, dhoopkathi or dhoopbatti. The word 'dhoop' not being mentioned in the entry is apparently not included within the scope of the entry. The contention of the applicant is that the impugned commodity would be covered by the term dhoopkathi or dhoopbatti. However, dhoopkathi or dhoopbatti are incense sticks- Dhoop is not in a stick form. It is a solid piece which has to be burnt when it gives off a pleasant smell. Neither does it contain a bamboo stick like 'Dhoopkathi' nor does it contain gum like 'Dhoopbatti.' 'Dhoop' unlike dhoopkathi or dhoopbatti cannot be held to a flame- it has to be put on coal to be lit. If the term 'dhoopkathi' or 'dhoopbatti' had included the impugned product 'Dhoop' then there was no need of inclusion of the term into the entry after 1.2.2006.

'Dhoop' is not specified anywhere in the schedule entry for the period from 1.4.2005 to 31.1.2006. Therefore, the item 'Dhoop' will fall under residual entry attracting 12.5% tax.

06. REQUEST FOR WAIVER:

The applicant has requested for waiver of tax difference on the lines of circular issued bearing no. 34 T of 2005, dt. 26.10.2005. Let us, therefore, see the contents of the circular and schemes of administrative relief.

The Government of Maharashtra by a resolution dated 4th October 2005 has sanctioned a scheme for grant administrative relief. As per the scheme the dealers who are dealing in certain class of commodities as annexed to the circular will get administrative relief for the period 1.4.2005 to 30.4.2005 on the goods on which tax rate was reduced from 1st May 2005 to 0% or 4% from 4% or 12.5% on fulfillment of condition as mentioned in the scheme.

It is seen that the impugned commodity is out of the ambit of the recitals of the scheme. The request of the applicant for grant of administrative relief on the line of the scheme can not be considered, hence negatived.

07. In view of the above, I pass an order as follows:-

ORDER

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

No. DDQ 11/2006/Adm-3/9/ B- 1

Mumbai, Date:23.01.09

The rate of tax applicable to sale of 'Dhoop' during the period 1.4.2005 to 31.1.2006 shall be 12.5% being covered by schedule entry E-I of the MVAT Act, 2002.

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