

Read :- Application dt. 2.9.2005 from M/s. Laxmi Vishnu Textiles (HUF).

Heard :- Shri. C.B. Thakar, CA attended the hearing on 11/03/2008 on behalf of M/s. Laxmi Vishnu Textiles (HUF).

PROCEEDINGS

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

No. DDQ 11/2005/Adm-5/109/B-01 Mumbai, Date 18/06/2008

An application is received from M/s. Laxmi Vishnu Textiles (HUF), of G. M. Achalkar, 23/408, Building No. 239,240, Ichalkaranji Industrial Estate, Ichalkaranji - 416117 requesting determination of the appropriate entry and the tax rate applicable to the sale of the product described as "Scotch - Brite floor mop" evidenced by the bill no. 388 dt. 30/08/2005.

02. FACTS OF THE CASE

The applicant dealer is a proprietary concern. The dealer is engaged in the business of manufacturing of cloth (fabrics) covered by schedule entry A-45. The dealer purchases the cotton and viscous yarn which is used in the weaving of the said cloth on power looms. The cloth manufactured is then cut to size of 2"x 2". All the four ends of the cut cloth are stitched like a handkerchief. Then a piece of non woven cloth is attached to it at the corner of the cut cloth. The cloth is packed in a polythene cover. The said packing cover is supplied by the vendee. The product is sold as "Scotch Brite Floor Mop - FLOOR WIPE CLOTH". The applicant submits that the product is used for wiping of all types of floors.

As per the dealer's contention, the product is nothing but a cloth (fabric). It is covered by the first schedule to the Additional Excise Duties Act and therefore, the product is exempted vide schedule entry A-45.

03. CONTENTION

In his submission dt. 23.11.2005, the applicant has invited attention to the schedule entry C-81(b) regarding article of personal wears etc. The notification issued under said entry dated 1.6.05 specifies the commodities more particularly described in the schedule appended thereto to be the articles of personal wear, clothing accessories, made up textile articles and sets for the purpose of the said entry. The schedule entry as well as the portion of the notification relevant to the product is reproduced by the applicant in his determination application. It is contended that the item at sr. no. 15 of

the notification covers the item dusters etc. Thus, the applicant's product should be held taxable @ 4% u/s. C-81(b). In his submission dt. 28.1.2006, the applicant has argued as follows in support of his contention that the product is covered by the schedule entry C-81(b) of the Maharashtra Value Added Tax Act,2002 :-

- The dealer was not dealing in taxable goods till today. The transaction put up for determination is the transaction relating to taxable goods. Hence no registration is obtained by the dealer till today.
- In response to the information sought from the applicant in respect of the manufacturing process of the product, the applicant clarified as follows :-
The floor wiping cloth (duster) is prepared from cotton fabrics. The cotton fabric is purchased in running length and it is cut in required size of 25" X 25". The sides are enclosed by folding the respective sides and stitching the same with thread. On one corner a small piece (flap) of other cotton fabric is stitched to make it attractive and decorative. Dusters are packed in small plastic packing bag and sold in the market.
- The raw material required is the cotton fabric in running length, thread for stitching and another cotton cloth for decorating one corner of the duster. The duster is made of cotton fabric.
- The dealer is not covered by Excise and hence Excise Chapter Code information is not readily available with him. However from relevant provisions of Excise Tariff Act, it can be said that the cotton fabric is covered by 52.09. The dusters, as submitted, are covered by chapter code 63.07.
- The dealer has also confirmed that the item is made of cotton textile. It is a set of non personal wear covered by the entry C-81.
- It was again requested to pass determination order holding the item as liable to tax @ 4% u/s C-81.

04. HEARING

The case was taken up for hearing on dt. 11/03/2008. Shri C.B. Thakar, CA attended the hearing on behalf of the applicant. He submitted that the product is a duster covered by the schedule entry C-81(b) of the Maharashtra Value Added Tax Act,2002. The product is described as a floor mop. He further submitted that the product is covered by the excise heading 6307 and the said heading is notified for the purpose of the said schedule entry. However, he was unable to produce the excise invoice as the applicant is not covered under Excise.

05. OBSERVATIONS

I have gone through all the facts of the case. The issue before me pertains to the rate of tax applicable to the product described by the applicant as "Scotch - Brite floor

mop". The applicant has laid claim regarding coverage under two schedule entries under the Maharashtra Value Added Tax Act,2002 as being applicable to the product under consideration. It is seen that in his application for determination, the applicant had laid claim on schedule entry A-45. However, in all his later submissions, the applicant has emphasized about the product being covered by the schedule entry C-81(b) of the Maharashtra Value Added Tax Act,2002. The schedule entry C-81 could be reproduced herein as follows :-

81	Readymade garments and other articles of personal wear, clothing accessories, made up textile articles of personal wear, clothing accessories, made up textile articles and sets as may be notified, from time to time, by the State Government in the Official Gazette.	1.4.2005 to 30.4.2005
81	a) Readymade garments. b) Other articles of personal wear, clothing accessories, made up textile articles and sets as may be notified, from time to time, by the State Government in the Official Gazette."	1.5.2005 to till date

It is seen that there is a notification for the purposes of the above entry. The applicant has contended that the impugned products are covered by the excise heading 6307 covered by the purposes of the aforementioned schedule entry. The notification dt. 01/04/2005 did not cover the excise heading 6307. The notification dt. 01/06/2005 covered the aforementioned excise heading. Hence, the relevant portion from the said notification could be reproduced as follows :-

Serial No.	Central Excise Tariff Heading	Name of the Commodity
15	6307	Floor-cloths, dish- cloths, dusters and similar cleaning cloths of cotton, man-made fibres or other materials.

It is seen that the above notification has made a reference to the Central Excise Tariff Heading. The applicant had not given any proof of the Central Excise Tariff Heading applicable to the impugned product. Hence, the applicant was asked to submit the necessary proof of the excise heading. This is necessary as the coverage of the impugned item under the schedule entry C-81 necessarily depends on the establishment of the fact that the impugned item is covered by the excise heading 6307. Hence, the applicant was also asked to explain the manufacturing process as also to submit other details of the impugned item so as to arrive at a fair and just determination. The applicant's representative, in his submission dt. 29.9.2007, has informed as follows :-

1. The applicant submits that they have not claimed that their item is covered by the first schedule to the Additional Excise Duties Act and hence, are not in a position to lead any evidence.
2. In respect of applicability of the Central Excise Tariff heading 63.07 to the impugned product, the applicant submits that, it is a duster for cleaning of the floor or it is in nature of duster for cleaning made of cotton fabrics and hence directly covered under heading 63.07. The applicant dealer is not covered by the Central Excise Act, hence no details are available about the classification by Central Excise Department. However, the applicant has given a copy of the Test Report by the Textiles Committee (Ministry of Textiles, Govt. of India) issued to 3M India Ltd., Bangalore to whom the applicant has sold the impugned item. The applicant submits that it is clear from the said report that the item is made of cotton and is a made up article of cotton. Therefore, it is clearly covered by the Central Excise heading 63.07. In the light of the above, it is submitted that their item is covered by the entry C-81(b).

For ready reference, the applicant has also given a zerox copy of the Central Excise heading 6307. From the said copy, the applicant submits that it can be seen that the chapter covers made up articles of any textile fabrics. The scope of the heading is very wide and as stated earlier, their item is made out of textile fabrics and it is a made up article of textile fabrics. It is also not falling under the excluded items in chapter 63. In addition, the applicant has also given a zerox copy of HSN related to chapter 6307. The applicant submits that it is clear that the item is duly covered by the chapter 6307.

3. As regards trade parlance and common parlance, the applicant submits that it is very clear that the item is used for cleaning of colours etc. i.e. it is a cleaning cloth. The information published on the packing of the item itself gives the idea of the nature of the article. The product is described as floor mop with unique scrubby corner. It is also mentioned that the product is suitable for marble, vitrified, granite, ceramic and red oxide floors. The directions for use given on packing also fully establish that it is a floor cleaning cloth. In addition to above, the applicant has also given a copy of the letter received from M/s. Goyal Kiryana Stores who are dealing in the item as kirana dealers. It is certified in the letter that they are selling the item to customers for use by them for cleaning floors. Thus, the applicant submits that this item is used as duster or as a cleaning cloth. This clearly establishes the trade parlance and common parlance meaning. In the light of the above, it is submitted that the item be classified under entry C-81(b).

It can be seen from the point no. 1 of the above reply that the applicant does not wish to pursue his claim, as made in the application for determination that the impugned product is covered by the first schedule to Additional Excise Duties Act and therefore by the schedule entry A-45. Hence, I would restrict my observations to the schedule entry C-81(b). The schedule as well as the heading notified for the purposes of the said entry has been reproduced earlier. As observed earlier, the notification makes

a reference to the heading under the Central Excise Tariff Act. However, the applicant has informed that he would be unable to give any proof of the excise heading under which the impugned product is covered. Hence, I now have to proceed with the description of the product as well as the sample thereof produced by the applicant to ascertain whether the product is such as fits the description for the purposes of the notified heading.

The heading notified covers the following goods :- *Floor-cloths, dish- cloths, dusters and similar cleaning cloths of cotton, man-made fibres or other materials*. The title of chapter 63 of the Central Excise Tariff is "Other made up textile articles; sets; worn clothing and worn textile articles; rags". The heading **6307** as appearing in the Central Excise Tariff is as follows :-

6307 Other made up articles, including dress patterns
6307 10 - Floor-cloths, dish- cloths, dusters and similar cleaning cloths:
6307 10 10 - - - Of cotton
6307 10 20 - - - Of man-made fibres
6307 10 90 - - - Other

The impugned product is made of cotton and viscous yarn which is used in the weaving of the said cloth on power looms. The packing of the product describes the product as "floor cleaning cloth". In the "Directions to use" printed on the packing, it is mentioned that the product is ideal for wet mopping either with plain water, soap water or disinfectant water. In the "Product features" printed on the packing, the following 4 features of the product are mentioned as follows :-

1. Unique "scrubby" corner to remove accumulated grime and stains.
2. Absorbs water upto 4 times its weight.
3. Excellent dust pick up.
4. Leaves minimal water behind while mopping.

The applicant has given a sample of the product. The applicant's product would be covered by the words "made up textile articles" used for the purposes of the schedule entry C-81/81(b). Having regard to the product features as well as the sample on record, I am of the opinion that the impugned product put up for determination is a cleaning cloth and would qualify for coverage in the description of the notified heading meant for the purposes of the schedule entry C-81(b).

The schedule entry C-81 was restructured w.e.f 1.5.2005. From the said restructuring, it can safely be said that the notification as appearing in the schedule

entry C-81 for the period 1/04/2005 to 30/04/2005 was for “other articles of personal wear, clothing accessories, made up textile articles of personal wear, clothing accessories, made up textile articles and sets”. It has been already observed by me that the notification dt. 01/04/2005 did not include the heading 6307. The heading was included in the notification dt. 01/06/2005. Hence, the product would not be covered by the schedule entry C-81 for the period 1/04/2005 to 31/05/2005 as the impugned product was not notified as a “made up textile article”. There is no other schedule entry under the Maharashtra Value Added Tax Act, 2002 which would cover the applicant’s product for the period 1/04/2005 to 31/05/2005. This would mean that the product would be placed in the residuary entry E-1 for the period 1/04/2005 to 31/05/2005, thereby attracting tax @12.5%. The product would, however, be covered by the schedule entry C-81(b) from 01/06/2005 onwards due to the inclusion of the heading 6307 in the notification dt. 01/06/2005.

06. In view of the deliberations held hereinabove, I pass an order as follows :-

ORDER

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

No. DDQ 11/2005/Adm-5/109/B-01 Mumbai, Date 18/06/2008

The question for determination as regards the rate of tax applicable to the sale of the product described as “Scotch – Brite floor mop” evidenced by the bill no. 388 dt. 30/08/2005 is herewith answered as being covered by the schedule entry C-81(b), thereby attracting tax @ 4%. The product would, however, be covered by the residuary schedule entry E-1 for the period 1/04/2005 to 31/05/2005, thereby attracting tax @12.5%.

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