

Read:- 1) Application dt. 16th May,2005 from M/s. Adhunik Plastic & Industries (P.) Ltd. holder of Registration Certificate No. 400002/S/2953 dt. 01/04/1996.
2) Written submission dt. 30th December,2006 by Shri Mahabirprasad S. Deora, STP on behalf of the applicant.
3) This office letters dt. 21st October,2005, 1st August,2006, 19th December,2006 calling the applicant for hearing.
4) This office letters dt. 26/02/2007 and 09/04/2007 calling the necessary details from the applicant.
Heard:- Shri Mahabirprasad S. Deora, STP attended on 02/01/2007 for hearing on behalf of the applicant.

PROCEEDINGS

(Under section 56(1) & (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/22/B-2

Mumbai,dt. 30.5.2007

An application is received from M/s. Adhunik Plastics & Industries (P.) Ltd., of 'Satyam House', 280/282, Narsi Natha Street, Bhat Bazar, Mumbai-400 009 requesting determination of the rate of tax applicable to their product "Silpaulin" sold vide invoice No. 128 dt. 10/05/2005.

02. FACTS OF THE CASE

The applicant is a private limited company and deals in various varieties of plastic goods manufactured by their principal, M/s. Supreme Industries Limited, one such item being, 'Silpaulin'. 'Silpaulin' is a multi-utility sheet and is used for various purposes, such as agriculturists using it for covering their crops, industries using it for packing of their goods. It is also used as pond lining in irrigation. The applicant has collected tax @ 4% on the sale of the item.

ABOUT THE PRODUCT

The brochures describe the product, Silpaulin as a multilayered cross laminated extruded plastic film. The cross film comprises of several layers of plastic film placed criss-cross over one another and bonded by a patented cold-roll technique, like in plywood which makes plywood much stronger than wood. The cross lamination gives quality of extra toughness, together with flexibility and lightness and a host of other properties that are singular to Silpaulin alone. It is merely 1/7 the weight of conventional cotton canvas tarpaulins. It has highest strength to weight ratio among plastic films. A combination of high tensile strength and high elongation makes Silpaulin very flexible. It is ideal for covering odd shaped objects. And it being puncture resistant can be used to cover blunt and solid objects without damage.

It has excellent moisture barrier properties. All joints are heat sealed so there is no leakage, no seepage. It is inert to most chemicals, acids and acid fumes. It is safe to use under indoor and outdoor conditions. Products like foodgrains, fertilizers, cement, chemicals etc., even the saline water does not affect it. After use it can easily be folded and stored. The handling is also easy in view of its light weight. It is treated especially to resist microbial and fungal attacks. It is UV stabilized to enhance its long life in spite of outdoor exposure. Compared to conventional tarpaulins, Silpaulin is far more economical. Silpaulin sheets allow over 80-86% light transmission.

APPLICATIONS

1. General Applications

- Covering machinery, raw material, packing material, finished products, paper cartons.
- Protection for any transit material.
- Shed covers offering protection against sun/rain/dew/dust.
- Truck Tarpaulin – Privacy walls.
- Camping Tents.
- Shelter for poor people/Temporary Shelter.
- Scaffolding at construction sites, etc.

2. Agricultural Applications :

- Drying of spices, areca nuts, coconut, rubber, chillies, turmeric, grapes (raisin) and other agricultural produce.
- Fumigation of tobacco leaves, food grains, grapes and other agricultural produce.
- Covering of agricultural produce (Pre and Post Harvest Sheets).
- Floor underlays (Donnage sheets)
- Small ponds for fresh drinking water, farm ponds for cultivation, fish farming, algae cultivation, Ajola farming, rain water harvesting etc.
- Poultry curtains and roofs.
- Covering of tendu leaves, tamarind and other forest / hill produce.
- Canal, Pond, Bund, Effluent Treatment Plant Lining
- Effluent treatment tanks, desalination plants and water storage tanks for industries such as paper, steel, fertilizers, sugar, chemicals and petrochemicals
- Water reservoirs and canal lining
- Nursery Bags
- Tractor, Bullock-Cart Covers

In view of the above, the applicant submits that the product is squarely covered by the entry at Sr.No. 164 of the notification issued for the purposes of the schedule entry C-54 of the Maharashtra Value Added Tax Act, 2002 wherein articles for the conveyance or packing of goods of plastic are described.

03. CONTENTION AND HEARING

The applicant has placed reliance on the determination order No.DDQ-10-04/Adm-5/85/B-1 dt. 01/01/2005 in the case of M/s. Sharp Batteries & Allied Industries Limited. The applicant submits that the product is used both for conveyance or packing of goods especially during monsoon as it was water proofing effect. When the cloth bales are exported, the same are normally packed in 'Silpaulin' and hence the applicant submits that the rate of tax should be 4%.

The case was fixed for hearing on 02/01/2007. Shri Mahabirprasad Deora, STP attended this office. However, due to certain unavoidable circumstances, the hearing could not take place. Hence, he was requested to attend for hearing on 9/1/2007. He, however, stated that, in view of his written submission dt. 30/12/2006, the case may be decided on merit without any hearing. The following points are raised in the written submission:-

- 1) Silpaulin and Tarpaulin are two different items. Silpaulin is a straight plastic sheet coming out of the factory while Tarpaulin is made from the said sheet.
- 2) Silpaulin is cleared under entry 39269099 of Excise Tariff and to substantiate the same, purchase bill from Supreme Ind. Ltd. who are the manufacturers has been submitted.
- 3) Silpaulin sheets are even used as packing material as the same are waterproof. Especially in export consignments, exporters of ready-made garments, chhaddars, fabrics prefer to use Silpaulin for the purpose of packing of bales and hence, Silpaulin can be classified as packing material.
- 4) There cannot be any dispute that from Silpaulin, plastic woven sacks can be prepared and it may be determined as covered under Entry 204 - 'plastic fabrics' of the notification on industrial inputs issued for the purposes of the schedule entry C-54 of the MVA T Act, 2002, thereby taxable @ 4%.
- 5) Another entry under which Silpaulin can be classified is Entry C-1 which pertains to agricultural implements. It is submitted that Silpaulin is useful in agricultural operations such as Green Houses and agricultural tunnels.
- 6) It is submitted that in all neighboring States like Andhra Pradesh, Karnataka, etc., even the Tarpaulin made out of any material is taxable @ 4% and hence, the trade has been guided that Silpaulin is taxable @ 4%. It is, therefore, submitted that in case the issue is decided otherwise then, prospective effect may be granted.

04. OBSERVATIONS

I have gone through all the facts of the case. The product under consideration is 'Silpaulin'. There are two claims (**C-1** and **C-54**) of the applicant as regards the schedule entry being applicable to the impugned product. Let me reproduce both the schedule entries and ascertain the claim of the applicant as follows :-

1] Schedule entry C-1

Agricultural machinery and implements, other than tractors, trailers, semi-trailers, oil engines, electric motors, pumps, electric pumping sets, capacitors of all types and pipes of all types.	01/04//2005 to 31/01/2006
Agricultural machinery and implements, and components and parts thereof other than tractors, trailers, semi-trailers, oil engines, electric motors, pumps, electric pumping sets, capacitors of all types and pipes of all types.	01/02/2006 to till date

The above schedule entry pertains to agricultural machinery and implements. Agricultural implement is an implement that is used in agriculture. The present product can by no means be said to be agricultural machinery or an agricultural implement. It is not used to cultivate the soil or in rearing of animals. The uses as at **para no. 02** do not in any way indicate that the product can be used as an agricultural machinery or implement. Hence, the question of coverage by the above entry is out of the question.

2] Schedule entry C-54

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

The above schedule entry pertains to industrial inputs and packing materials which have been notified by the State Government. The notification is excise based. The applicant has placed reliance on the case of M/s. Sharp Batteries & Allied Industries Ltd. in support of his claim that the impugned product is covered by the notification for industrial inputs and packing materials. However, the issue involved therein was "pallets" used for conveyance or transportation of the goods from one place to another. Also, the description against the excise heading as well as the description notified for the purposes of the schedule entry was similar subject to an exclusion clause. The said goods were not covered by the exclusion clause for the said description under the notification and hence were held as covered by the notification.

The applicant has submitted that, the excise heading applicable to the product is 39269099 [**39269099 -- Other**].

The applicant has laid claim on two headings (**HEADING - 39.23** and **HEADING - 39.26**) notified for the purposes of the above schedule entry. Hence, let me reproduce herein the description against the excise headings 3923 and 3926 which have been notified for the purposes of the schedule entry C-54 as well as the description against both the headings under Central Excise.

[A] HEADING - 39.23

CENTRAL EXCISE	NOTIFICATION DT. 01-04-05	NOTIFICATION DT. 01-09-05
Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics	Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures, of plastics but not including- (a) insulated wares (b) bags of the type which are used for packing of goods at the time of sale for the convenience of the customer including carry bags	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics but not including- (a) insulated wares (b) carry bags that is to say bags of the type which are used for packing of goods at the time of sale for the convenience of the customer

The description against the heading notified for the purposes of our schedule entry is not similar to the description against the heading under the Central Excise. **Moreover**, the excise heading applicable to the product being 3926.9099, the product cannot be said to be covered by the tariff heading 39.23 of the above notifications.

[B] HEADING - 39.26

CENTRAL EXCISE	NOTIFICATION DT. 01-04-05	NOTIFICATION DT. 01-09-05
Other articles of plastics and articles of other materials of headings 3901 to 3914.	[Heading not notified]	Plastic fabrics of the type used for making plastic woven sacks and plastic woven sacks.

The description under Central Excise against the Excise heading 3926 is for *“other articles of plastics and articles of the materials of heading 3901 to 3914”*. The description against the heading notified for the purposes of our schedule entry is not similar to the description against the heading under the Central Excise. The description against the notification seeks to cover *“plastic fabrics of the type used for making plastic woven sacks and plastic woven sacks”*. Hence, now let me see as to whether the product of the applicant

- (a) is a plastic fabric of the type used for making plastic woven sacks; and
- (b) can be used to make a plastic woven sack.

The applicant deals in varieties of plastic goods manufactured by their principal, M/s. Supreme Industries Limited. It is seen from the website of M/s. Supreme Industries Limited, that they are the manufacturers of '*cross laminated films*' sold under the brand name '*Silpaulin*'. The product has applications as follows:-

- Agriculture
- Tarpaulin
- Covers
- Sacks
- Flexi Container Liner

Thus, one of the uses to which the present product can be put to is the making of 'sacks'. Sacks made from 'Silpaulin' are used for packing of several products like plastic granules, confectionery, pesticides, detergents, animal feed, chemicals, feed supplements, cement paints, wax, etc.,.

The applicant has submitted the bill of M/s. Supreme Industries Limited as evidence of the excise heading applicable to the product. The bill mentions the product as 'Silpaulin' and the following excise headings :-

Tariff Sub-Heading No. : 39201092, 39232100, 39159090, 39012000 & 39269099

Thus, it is not possible to pinpoint a single excise heading as being applicable to the product 'Silpaulin'. The applicant has, however, marked the excise heading 39269099 as being applicable to the product.

Now, if the excise heading applicable to the product as submitted by the applicant is 39269099, then the said heading has been notified for the purposes of the schedule entry C-54 (notification dt. 01-09-05). The description against the said heading for the purposes of the notification is, however, not similar to the description against the heading under Central Excise. The notification seeks to cover plastic fabrics of the type used for making plastic woven sacks. We have seen in the preceeding para that, the present product can be used in the making of 'sacks'. However, the utility of the product in making sacks is not the only criteria. It needs also to be seen as to whether the fabric, from which the sacks are to be made, is used for making plastic woven sacks. Thus, it should be noted that, only the product **1.** classified under the excise heading 39269099 **and**

2. used to make plastic woven sacks
would be covered by the notification dt. 01-09-05.

Hence, now it needs to be seen as to whether the product would meet the requirements of a plastic woven sack. In this regard, let me have a look at the following meanings from the Condensed Chemical Dictionary:-

Woven fabric

A “**woven fabric**” is composed of two basic series of yarn, warp and filling. Weaving is the interlacing of these yarns to form a fabric and the specific manner in which the two sets of yarns are interlaced determines the weave. There may be two or more warps and fillings in a fabric depending on its character and complexity.

There are three basic weaves, the plain, twill and satin. All other weaves, no matter how complicated, may be considered as combinations or modifications of these fundamental weaves. By using various combinations of the three basic weaves, it is possible to produce almost an unlimited variety of patterns and fabric types.

In addition to variations in weave, many novelty effects may be obtained by using different kinds of yarn, filament or spun types of different fibres and of different twists.

Methods of making fabrics other than by weaving include knitting, felting, needle-punching, netting, crocheting, lace-making, tatting and by using fiber webs with a chemical or plastic bonding agent as in nonwoven fabrics.

Weave

1. The method or process of interlacing two yarns or similar materials so that they cross each other at right angles to produce woven fabric. The warp threads or ends run lengthwise in the fabric, and the filling threads (weft or picks) run from side to side. 2. Method or pattern of weaving. The three basic weaves are plain, twill and satin or sateen (q.q.v). All other weaves, including the most intricate, are derived from one or more of these, such as plain with variations of basket and rib. Fancy weaves include: pile, backed and double cloth, Jacquard, leno; embroidered include: lappet, swivel and clipped spot. Also see Schiffli. 3. As a verb, the act of weaving through causing two systems of yarn, warp and filling, to interlace. This may be done on a power or hand loom or by several hand methods. 4. A Scottish term for knit.

M/s. Raj Pack-well Ltd. v. Union of India (50 E.L.T 201 (M.P))

In this case, the process of manufacturing of HDPE woven sacks was described as follows :-

“15. To appreciate respective contentions of the parties, first let us see the process of manufacture of HDPE tapes, fabrics or sacks. The raw material undisputedly is HDPE

granules. They are manufactured from polymers of ethylene or propylene from their primary form of granules of high density of polyethylene (HDPE). The manufacturing operation is undertaken in the following steps :- extrusion of granules into tubular films, then cutting of tapes into flat films, then films are slitted into strips, then the strips are stretched into plastic tapes, then plastic tapes are wound in bobbins and then these plastic tapes are woven into tubular fabric. This fabric can be cut into flat fabric also. It may also be, according to requirement, laminated with low density polyethylene. The tubular or flat fabric, as the case may be, laminated or unlaminated, is cut into desired length, then the pieces are stitched into sacks (bags) of required shape and size. As such in the manufacture of the aforesaid tapes, sacks and fabric, the material used is the plastic granules."

The applicant has submitted a sample of the product. It is an extruded plastic film. The cross film comprises of several layers of plastic film placed criss-cross over one another and bonded by a patented cold-roll technique, like in plywood which makes plywood much stronger than wood. From a plain look at the sample submitted, it can be seen that, there is no process of weaving involved. The fabric would not fulfill the requirements of a plastic fabric of the type used for making a plastic woven sack. Now, if the applicant claims that, his product is a raw material for manufacturing plastic woven sacks then, the said claim also cannot be acceptable as the impugned product 'Silpaulin' would involve no process of weaving in the making of the sack.

In spite of the facts being as clear as above, the applicant was asked to explain as to whether his fabric is of the nature as to make plastic woven sacks. However, the applicant has not responded even after offering opportunities to do so.

In view of the product not being a fabric from which a plastic woven sack is capable of being made, the product would not be covered by the heading **39.26** notified for the purposes of the notification dt. 01-09-05.

There being no specific entry for the applicant's product, the same would be covered by the residuary schedule entry E-1, thereby attracting tax @12.5%.

05. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect, if the determination is held otherwise. The descriptions against the excise headings are not similar to the descriptions notified for the purposes of the schedule entry C-54. Hence, there should

not have been any misunderstanding as regards the coverage of the product under the notification. Also, the applicant has not established any case of judicial misguidance. Hence, it is felt that, the prayer for prospective effect cannot be considered favourably.

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

ORDER

(Under section 56(1) & (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/22/B-2

Mumbai,dt. 30.5.2007

It is hereby determined that, the product "Silpaulin" would be covered by the schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby taxable @ 12.5%.

The prayer for prospective effect is herewith rejected.

(B. C. KHATUA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.