

Read :- 1. Application dated 4/9/2007 by M/s. Anil Chemicals & Industries Ltd., holder of TIN No.27680000641V/C.

Heard :- Shri N.V. Tapre, Advocate and Shri. Deepak Khandelwal (GM)

PROCEEDINGS

(under Section 56(1) (e) and section 56(2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2005/Adm-3/35/B- 4

Mumbai, dt. 31.12.2007

The application is filed by M/s. Anil Chemicals & Industries Ltd., having address is Gut No.72, village Pharola, Taluka Paithan, Dist. Aurangabad, (M.S.) India-431105, requesting determination order on the rate of tax of the following products.

- a) Co-extruded Plastic Tubes sold through invoice No.280 dt.2/9/2007
- b) Scrap Tubes & Sleeves sold through invoice no.266 dt.25.08.07

2. FACTS OF THE CASE:

The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002. It is submitted by the applicant that, at present they are collecting the VAT @ 12.5% on the sale of 'Co-extruded Plastic Tubes' being schedule E-I goods and tax @4% on sale of 'Scrap Tubes & Sleeves.

Earlier, the applicant had requested clarification in respect of sales of 'co-extruded plastic tube' and 'scrap tube and sleeves' and he was accordingly informed through letter dt.11/6/2007 that, 'co-extruded plastic tube' would be covered by schedule entry C-54 and would be taxable @ 4% being covered by the excise heading 3923.9090 and 'scrap tube and sleeves' would be covered by C-54 and would be taxable @ 4% being covered by the excise tariff heading 3915.3090. The applicant, not satisfied with the clarification given to him have applied for statutory determination u/s 56 of the Act.

• MANUFACTURING PROCESS OF THE PRODUCTS

Different types of Polymers are loaded in Extruder No.1, No.2 and No.3 for making sleeve pipes. This polymer material is heated with the help of heating coil which are controlled through PLC. This material is melted in screw barrel which has about 290 C. temperature. The screw barrel capacity is about 15 kg. By setting the diameter and length

variant sleeves are obtained. These sleeves then go to the Aisa machine for shouldering with required orifices. Then these tubes go for Printing M/c i.e. Polytype. On this m/c, there are U V LAMPS for Ink & Lacquer (Varnish). These Lamps have about 260 C temperature.

The product literature is also submitted along with the application. It describes Anil Chemicals & Industries Ltd., as a pioneer and the largest manufacturer of co-extruded plastic tubes in India. The photograph of the products sold by the applicant is also available on the product literature.

3. HEARING

The hearing was fixed on 11/12/2007. Shri N.V. Tapare, Advocate, attended for the hearing along with Shri. Deepak Khandelwal (GM), the representative of the company. He stated that they are manufacturers of 'co-extruded plastic tubes' and in the manufacturing process the sleeves are generated. At present the applicant is charging 12.5% on 'co-extruded plastic tubes' and they have been doing so also under BST as well as under VAT Act. However, they have been charging 4% on sleeves. The basic issue according to them is the rate of tax. Although they had been informed that the rate of tax on 'co-extruded plastic tubes' is 4% ,they are not satisfied with the reply as according to them the rate of tax is 12.5%. They, however, agreed with the clarification of 4% tax as regards sleeveings. They have made a prayer that if the 'co-extruded plastic tubes' is held as 4% then the order may be given prospective effect from the date of the determination order.

4. DECISION

The dispute in this case is with regard to the correct rate of tax on co-extruded plastic tubes and Scrap Tubes & Sleeves.

It is seen from the invoice issued by the applicant that the co-extruded plastic tubes are cleared under excise heading 39239090. The said heading 39239090 is notified as an 'industrial input' for the purpose of schedule entry C-54. The products covered by the excise headings and sub-headings are in turn notified for the purpose of schedule entry C-54 and are taxable @4%. The heading under consideration is notified at Sr. No.203 of the notification issued for the purpose of schedule entry C-54. But before going into the question as to whether the product is covered by the excise heading or not, it has to be seen whether the product is , by nature, utility and make an 'input' used in industries.

Needless to say, the schedule entry for industrial inputs C-54 covers only those inputs and packing material which are meant for industrial use. This was clearly laid down in the MSTT decision in the case of M/s. Samruddhi Industries (Appeal No.54 of 2004 dt.28/2/2005). In this case the issue was whether plastic products like Ghamela, crates which are made for household purposes would be covered by schedule entry for industrial inputs C-I-29 under the BST Act. This appeal to the MSTT was against the determination order given by the Commissioner of Sales Tax u/s 52 of the BST Act, 1959. The Commissioner in the said case had explained that in order to qualify as an industrial input, the product must be a raw material by nature and it should be an input i.e. it should be used as inputs or raw material for industries and secondly it should be covered by the relevant excise heading under consideration. The Tribunal was pleased to uphold these observations made by the Commissioner in the appeal before it. I will therefore apply these criteria and the parameters laid down to the instant case before deciding the classification.

The products of the applicant are 1) Co-extruded Plastic tubes 2) Scrap tubes and sleeves. I will first make my observations with respect to Co-extruded Plastic tubes.

1) CO-EXTRUDED PLASTIC TUBES.

The product manufactured by the applicant is cleared under excise heading 3923.9090 which is notified as an 'industrial input' for the purpose of schedule entry C-54. Now, from the name of the product, it is not understood, whether the product is an article i.e., a finished product (finished product of packing material) or whether the product is a raw material for the manufacture of the packing material.

The applicant has given a copy of the Tax and Excise invoice as per which the product is described as follows :-

“Co-extruded plastic printed tubes for Garnier Light Face Wash Tube”

The applicant has also given a copy of the letter written to his tax consultant seeking guidance as regards the rate of tax applicable to the impugned products. In the said letter, the applicant has described the product as follows :-

“Used as input as packing material by the buyer”.

This means that, the product of the applicant will be used as input in the making of the packing material. The applicant has not provided any description or for that matter, a sample of the product, from which the nature of the product as regards its being a finished article or a raw material input in the making of the finished article, can be understood. However, it is seen from the photographs that it is used as a tube for packing cosmetics, medicines etc. It does not have any retail use. Therefore, it can be inferred from the above that the product is an industrial input.

Having decided the above, I shall now proceed whether the product is covered by the heading 3923.

The relevant schedule entry under the MVAT Act is as follows :

<i>Schedule entry</i>	<i>Description</i>
C-54	Industrial inputs and packing materials as may be notified from time to time by the state Government in the Official Gazette.

The heading 3923 as notified under the entry is as follows:

Heading	Central Excise	Notification dt.1-4-2005	Notification dt.1-9-2005
3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures of plastic.	Articles for the conveyance of 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 Heading 3923 as in the HSN which is similar to the heading under the CET Act is as follows:.

3923	<i>Articles for the conveyance of packing of goods of plastics; stoppers, lids, caps and other closures, of plastics.</i>
3923.10	Boxes, cases, crates and similar articles sacks and bags (including cones)
3923.21	Of polymers of ethylene
3923.29	of other plastics
3923.30	Carboys, bottles, flasks and similar articles
3923.40	spools, cops, bobbins and similar supports
3923.50	stoppers, lids, caps and other closures
3923.90	other

“...This heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products. The articles covered include:

(a) Containers such as boxes, cases, crates, sacks and bags (including cones and refuse sacks), casks, cans, carboys, bottles and flasks.

The heading also covers:

(i) Cups without handles having the character of containers used for the packing or conveyance of certain foodstuffs, whether or not they have a secondary use as tableware or toilet articles;

*(ii) Bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.**

(b) Spools, cops, bobbins and similar supports, including video or audio cassettes without magnetic tape.

(c) Stoppers, lids, caps and other closures.

The heading excludes, inter alia , household articles such as dustbins, and cups which are used as tableware or toilet articles and do not have the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes (heading 39.24), containers of heading 42.02 and flexible intermediate bulk containers of heading 63.05.””””

*** Emphasis added**

The heading as reproduced for the purpose of the entry C-54 differs from the corresponding excise heading in that it excludes the following category of goods:

- 1) insulated ware
- 2) carry bags.

Insulated ware covers utensils like Hot pots, casseroles which are insulated against heat. The product is a plastic tube and is not insulated. It is apparently also not a carry bag. Therefore, it is evident that it is covered by the main part of the heading 3923 and it follows that if it is cleared under the excise heading then it stands covered by schedule entry C-54 as it is not affected by the exclusions provided by the heading.

It appears that, the product is of the type with one closed end and the other end open or both ends open. When the HSN Explanatory Notes were referred to seek clarification on the issue, it is seen that, the heading 39.23 also covers 'Bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape'. This category includes those plastic tubes closed at one hand which can be expanded to a size and shape. The product manufactured by the applicant is cleared under excise heading 3923.9090 and the description as given in the explanatory notes of 'bottle preforms' covers plastic tubes.

From the description on the invoice, it is seen that, the co-extruded printed plastic tube is used for packing products like 'Garnier Gentle Face wash', 'Styling gel', 'Rejuvenating face balm' which are toilet articles and medicines. Thus, the present product is of the character of containers such that, face wash, gels would be stored in the same. Hence, it is felt that the product being classified under Central Excise heading 3923 and the said heading being covered for the purposes of the schedule entry C-54, the rate thereon would be 4%.

2) SCRAP TUBES & SLEEVES

The applicant has informed that, the excise heading applicable to the product is 3915.3090. The Tax invoice/ Excise invoice describes the product as"

"Scrap-white (white SFUP tube & sleeves)"

In the clarification letter regarding tax rate addressed to the Tax consultant, the product is described as "

"Scrap-tubes & sleeves - generated in the manufacturing process and sold as scrap"

As per the HSN explanatory notes, the products of the heading 3915 may consist of broken or worn articles of plastics, clearly not usable for their original purposes, or of manufacturing waste (shavings, dust, trimmings, etc.). Some waste can be re-used as moulding material, varnish base, fillers, etc. The product is an input for the plastic industry wherein it is re-used. Thus, it satisfies the parameter of an 'input'.

Now, it is to be seen whether it is covered by any of the excise headings which are notified for the purpose of schedule entry C-54. The applicant has placed the claim of heading 3915 and it is seen from the tax invoice that the product is also cleared under excise heading 39153090. Now the notification dt. 1.4.2005 issued for the purpose of schedule entry C-54 did not cover the excise heading 3915. The notification dt. 1.9.2005 covered the said heading & the description against the same was similar to that under Central Excise as can be seen below :-

Heading	Central Excise	Notification dt. 1.4.2005	Notification dt. 1.9.2005
3915	Waste, parings and scrap, of plastics	_____	Waste, parings and scrap , of plastics

As to coverage under the excise heading 3915, the product is cleared by the applicant under the said heading and the description is also the same. In such an event, I hold that the product 'SCRAP TUBES & SLEEVES' are covered by schedule entry E- 1 for the period 1.4.05 to 31.8.05 and 4% from 1.9.05 onwards.

5. PRAYER FOR PROSPECTIVE EFFECT U/S.56(2) OF THE ACT:

The applicant has prayed for prospective effect under section 56(2) of the MVAT Act. The said section 56(2) is reproduced as below"

.....' 56(2) The Commissioner may direct that the determination order shall not affect the liability under this act of the applicants or, if the circumstances so warrant, of any person so similarly situated , as respects any sale or purchase effected prior to the determination.."

The said section 56(2) gives the Commissioner authority to direct that the determination order passed by him shall not affect the liability of the dealer before the date of the determination order. The Commissioner is so empowered by the legislature as to provide relief to the applicants from any burden of tax prior to the decision. It also implies that the determination order passed by the Commissioner is always retrospective but can be made prospective by the Commissioner by exercising the powers u/s 52(3) only if the circumstances so warrant. Therefore the power to grant prospective effect is dependent upon the facts of the case, and needless to say, like any discretionary power, is to be exercised judiciously.

In the instant case, it is argued by the applicant that they have been charging 12.5% and they have been assessed accordingly for many years. No objection with regard to rate of tax on 'co-extruded plastic tubes' was raised against them on the stage of assessment. In view of the plea of the statutory misguidance, it is requested by the applicant that the prospective effect be given to the determination order. The applicant has collected 12.5% and in case the product is not made prospective the tax is liable to be forfeited. Thus, the applicant would be affected adversely. In view of the special circumstances of the case and in order to avoid forfeiture of the tax and the consequent difficulties, I hold that the order is made effective from the date of the determination order with respect to sale of 'co-extruded plastic tubes'. As for the other product, 'scrap tubes and sleeves' the applicant has been collecting tax @4% correctly and it is held accordingly in this order. Therefore, I see no point in granting prospective effect as far as sale of 'scrap tubes and sleeves' is concerned.

5. In view of the aforesaid discussion I pass the order as follows.

ORDER

(under Section 56(1) (e) and section 56(2) of the Maharashtra Value Added Tax Act, 2002)
No.DDQ-11/2007/Adm-2/35/B- 4 Mumbai, dt. 31.12.2007

1. The rate of tax on the commodity is as follows.

<i>Sr.No.</i>	<i>Commodity</i>	<i>Invoice No. & Date</i>	<i>Schedule entry</i>	<i>Rate of tax</i>	<i>Period</i>
1.	Co-extruded Plastic Tube	280 dt.2/9/2007	C-54	4%	1.4.05 to date

<i>Sr.No.</i>	<i>Commodity</i>	<i>Invoice No. & Date</i>	<i>Schedule entry</i>	<i>Rate of tax</i>	<i>Period</i>
2.	Scrap Tubes & Sleeves	266 dt. 25.8.07	E-1	12.5%	1.4.05 to 31.8.05
			C-54	4%	1.9.05 till date

2. The order with regard to sale of 'Co-extruded plastic tubes' shall take effect from the date of the determination order.

Sanjay Bhatia
Commissioner of Sales Tax,
Maharashtra State, Mumbai