

8<sup>th</sup> floor, Vikrikar Bhavan,  
Mazgaon, Mumbai 400010.

## TRADE CIRCULAR.

**Sub:** Unmanufactured tobacco, sold in sealed packets under a brand name.

**Ref:** 1. Trade Circular No. 9T of 2012 dated 30<sup>th</sup> June 2012.  
2. Trade Circular No. 3T of 2013 dated 10<sup>th</sup> June 2013.  
3. Bombay High Court Judgment in the case of M/s Amar Agencies [Writ Petition No. 4944 of 2013 dated 5<sup>th</sup> May 2017 and other petitions]

No. VAT/ROT-2013/22C/Adm-8/B-454  
Trade Cir. 54 T of 2019

Mumbai Dt: 28.11.2019

**Synopsis:** Guidelines are given to the assessing & appellate authorities, handling cases of dealers, dealing in unmanufactured tobacco, sold in packets under a brand name, in view of the Bombay High Court judgment in the case of M/s Amar Agencies & others.

### **Background:**

As per MVAT schedule entry A-45A, unmanufactured tobacco covered under tariff heading No. 2401 of the Central Excise Tariff Act, 1985 (5 of 1986) is tax-free during the period from 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2013 .

An Explanation was inserted in schedule entry A-45A by notification no. VAT 1512/C.R. 40/Taxation-1 dated 31<sup>st</sup> March 2012. The said Explanation reads as follows:

**“Explanation.-** For the removal of the doubts, it is hereby declared that the unmanufactured tobacco shall not include unmanufactured tobacco when sold in packets under the brand name.”

By Trade Circular No 9T of 2012 dated 30th June 2012, this amendment was explained. As per this Trade Circular, the said Explanation was to be made applicable retrospectively from the 1<sup>st</sup> April 2007. In view of this interpretation, the taxability of unmanufactured tobacco sold in packets under the brand name was explained in the said Trade Circular as follows:

Period	Schedule entry	Tax rate
1 <sup>st</sup> April 2007 to 30 <sup>th</sup> June 2009	E-1	12.5%
1 <sup>st</sup> July 2009 to 30 <sup>th</sup> April 2012	D-12	20%
1 <sup>st</sup> May 2012 onwards	E-1	12.5

From 1<sup>st</sup> April 2013 onwards, unmanufactured tobacco, whether sold under brand name or not has become taxable being classified under the residuary entry E-1.

Accordingly, assessment orders have been passed, by following the interpretation in the Trade Circular No. 9T of 2012 dated 30th June 2012.

**2. Hon. Bombay High Court ruling:** Being aggrieved by the interpretation in the Trade Circular, M/s Amar Agencies and some other petitioners challenged the retrospective applicability of the said Explanation to entry A-45A by Writ Petition No. 4944 of 2013 and others. Hon. Bombay High Court has delivered a judgment on 5<sup>th</sup> May 2017 on these Writ Petitions and has held that the said Explanation to schedule entry A-45A is not clarificatory but is amendatory and hence shall not be applicable retrospectively but shall be applicable from 1<sup>st</sup> April 2012 onwards. Bombay High Court has set aside the assessment & appeal orders, passed in the cases of the petitioners and remitted the cases of the petitioners to the Tribunal for deciding the cases afresh in tune with this judgment.

**3. Guidelines for the assessing authorities/appellate authorities:** In view of the above, the following guidelines are being given to the assessing & appellate authorities:

- i. Trade Circular No. 9T of 2012 dated 30th June 2012 stands modified in accordance with the High Court judgment.
- ii. The assessing authorities & the appellate authorities shall decide the assessments & appeals in accordance with the Bombay High Court judgment.
- iii. The Bombay High Court judgment has applicability for the periods from 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2012. In view of this High Court judgment, the position of taxability of unmanufactured tobacco shall be as follows:
  - a. 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2012: Unmanufactured tobacco, whether sold in packets under the brand name or sold otherwise is tax-free [Sch. entry A-45A].
  - b. 1<sup>st</sup> April 2012 to 30<sup>th</sup> April 2012:
    - i. Unmanufactured tobacco, when sold in packets under the brand name, is taxable at 20% [Sch. entry D-12].
    - ii. Unmanufactured tobacco, sold otherwise, is tax-free [Sch. entry A-45A].

c. 1<sup>st</sup> May 2012 to 31<sup>st</sup> March 2013:

i. Unmanufactured tobacco, when sold in packets under the brand name is taxable at 12.5% [Sch. entry E-1].

ii. Unmanufactured tobacco, sold otherwise, is tax-free [Sch. entry A-45A].

d. 1<sup>st</sup> April 2013 to 16<sup>th</sup> September 2016:

Unmanufactured tobacco, whether sold in packets under the brand name or sold otherwise, is taxable at 12.5% [Sch. entry E-1].

e. 17<sup>th</sup> September 2016 to 30<sup>th</sup> June 2017:

Unmanufactured tobacco, whether sold in packets under the brand name or sold otherwise, is taxable at 13.5% [Sch. entry E-1].

**(Rajiv Jalota)**

Commissioner of Sales Tax,  
Maharashtra State, Mumbai

No.VAT/ROT-2013/22C/Adm-8/B-454  
Trade Cir. 54 T of 2019

Mumbai Dt: 28.11.2019

Copy forwarded to the Joint Commissioner of Sales Tax (Mahavikas) with a request to upload this Trade Circular on the Departments web-site.

**(S. H. Umale)**

Joint Commissioner of Sales Tax,  
(HQ)1, Maharashtra State, Mumbai.

