

Read:- Application dt.30th July 2014 from M/s. Quality Tissue Converting Company Pvt. Ltd.
Heard:- Shri A.B. Ghanekar, STP attended the hearing on behalf of the applicant.

PROCEEDINGS

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

No.DDQ-11-2014/Adm-6/18/B- 2

Mumbai, dt. 14/11/2014

An application is received from M/s. Quality Tissue Converting Company Pvt. Ltd., situated at Sr. No.242, Rajiv Gandhi Infotech Park Phase - I, Block - II, Hinjewadi, Pune - 411057, requesting determination of the rate of tax applicable to their product "Crepe Tissue Paper". The applicant also prays for prospective effect in the event that the contention of the applicant about the rate of tax applicable to the product is not acceptable.

02. OBSERVATIONS

The case was taken up for hearing on dt.24.09.2014 when Shri Ghanekar [STP] attended the hearing. The claim of the applicant, as made in the application, is that the impugned product is covered by the entry 70 for 'paper' as appearing in the Schedule C appended to the Maharashtra Value Added Tax Act, 2002 (MVAT Act,2002). During hearing, the applicant was informed about the Determination Order No.DDQ-11-2010/Adm-3/10 & 16/B-6, dt.04.03.2013 in the case of M/s. Paper Kraft Mfg. (I) Pvt. Ltd. and M/s. M.H. Enterprises wherein the claim for coverage of the product 'tissue paper' under schedule entry C-70 for 'paper' was, after elaborate deliberations, not found proper and, therefore, was held as covered by the residuary entry E-1 of the MVAT Act,2002. The application reveals that the applicant, too, is aware of the same and during hearing, it was submitted that there is no submission as regards the merits of the case as the aforesaid determination order is acceptable to the applicant. In view thereof, I see no occasion to reproduce and deliberate on the contention, as made in writing by the applicant, in support of the applicable schedule entry. As decided in the aforementioned Determination Order, the impugned product stands covered by the residuary schedule entry E-1 of the MVAT Act,2002, thereby taxable @12.5%.

03. PROSPECTIVE EFFECT

The other issue as raised in the application and also during hearing is about prospective effect to the present determination order. It is requested that the determination in the case of the applicant be given prospective effect upto dt.02.02.2010 as the Trade Circular clarifying about tissue paper not being covered by the schedule entry C-70 was issued on dt.03.02.2010. The reason for making the request for prospective effect was cited as statutory misguidance in the form of the Trade Circulars issued by the Sales Tax Department. In the aforementioned Determination Order, this aspect about issuance of Trade Circulars for the purposes of this entry was discussed and deliberated upon. The Trade Circulars which clarified the scope of the

schedule entry C-70 for 'paper' have referred to the Central Excise Tariff Heading (CETH) applicable to the products specified therein. Therefore, I have to look at the proof in respect of the CETH applicable to the impugned product. The invoice No.1265 dt.11.07.2014 evidencing sale of the product "Crepe Tissue Paper BTR - sheets" presented for determination mentions the CETH as 4818.10.00. However, the description against the CETH 4818 10 00 under Central Excise is 'Toilet Paper'. The description against CETH 4818 20 00 is "Handkerchiefs, cleaning or facial tissues and towel". When the applicant was queried about the Central Excise classification being inconsistent with the product description, it was replied that the product is toilet paper roll which is converted from Crepe Tissue Paper Roll covered under CETH 48181000. The submission dt.06.10.2014 further states thus -

" We purchase Crepe Tissue Paper in Jumbo Rolls from the market, convert the same into various sizes and shapes, place the same in appropriate packing and then sale the same to customers as Toilet Paper Roll, Face Tissue Paper & Paper Napkin.

Toilet Paper is a soft tissue paper product primarily used for wiping. It is typically sold as a long strip of perforated paper wrapped around a paperboard core, to be stored in a dispenser adjacent to a toilet. Toilet Paper can be one- or two-ply, meaning that it is either a single sheet or multiple sheets placed back-to-back to make it thicker, softer, stronger and more water absorbent.

We are dealing in following commodities which are covered under Excise Tariff Heading No.4818 : - - (Toilet paper and similar paper, Cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, serviettes, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres.)

S.No.	Description	Excise Tariff No.
1	Toilet Paper Roll Crepe Tissue Paper Roll- BTR	4818.10.00
2	Crepe Tissue Paper Napkin, Crepe Tissue Paper Facial, Crepe Tissue Paper Utility Roll, Greenline Super Kitchen Roll Towel, Greenline Natural White C Fold Towel, Greenline Super Green M Fold Towel, Natural White M Fold Towel, Greenline Paper Napkins, Handkerchiefs, Cleansing and Facial Tissue and Towels	4818.20.00
3	Other Tissue Paper Retail Items, Lush Napkin Tissue, Crepe Tissue Paper -Facial(Car Design), Crepe Tissue Paper Toilet Roll (Floral PK)	4818.90.00

In respect of all above commodities we paid tax @4% as per Trade Circular 35T of Dt.09.11.2005 upto 03.02.2010....."

In the application too, the applicant has described the manufacturing process thus :

1. *" Purchase various types of Jumbo Roll Tissue Paper & packing material.*
2. *Quality of Raw Material and Packing Material checked by Q.A. Department.*
3. *Jumbo Roll of Tissue Paper Converted into Tissue Paper by Machines. In this process includes steps like Cutting, Folding & Sliting of Tissue paper etc.*
4. *After conversion of Tissue Paper it is packed in a Poly & paper Sleeves.*
5. *Finished goods quality checked by Q.A. Dept.*
6. *Finished goods dispatch to ware house. "*

Thus, the applicant informs that tissue paper is purchased in jumbo rolls and after cutting

in various shapes and sizes, the same is sold as Toilet Paper Roll, Face Tissue Paper & Paper Napkin. From the Table reproduced above, it is seen that the applicant is also treating 'toilet paper' and 'tissue paper' as falling in CETH 48181000 and 48182000 respectively. And the applicant has informed that though the product in the bill submitted for determination is referred to as 'tissue paper', the same is actually 'toilet paper' made from 'tissue paper'. The applicant has submitted other bills too wherein the commodities and the CETH's are mentioned thus :

S.No.	Description	Excise Tariff No.
1	Crepe Tissue Paper BTR - Sheets	48181000
2	Crepe Tissue Paper Toilet Roll (Floral PK)	4818.90.00
3	Lush Napkin Tissue	4818.90.00
4	Crepe Tissue Paper Utility Roll	4818.20.00
5	Greenline Super Kitchen Roll Towel- Sheet	4818.20.00
6	Crepe Tissue Paper Napkin - Pulls	4818.20.00
7	Greenlime Paper Napkins	4818.20.00
8	Greenlime Super Green M Fold Towel	4818.20.00
9	Greenlime Natural White C Fold Towel	4818.20.00
10	Crepe Tissue Paper Utility Roll	4818.20.00
11	Crepe Tissue Paper Napkin	4818.20.00
12	Crepe Tissue Paper -Facial (Car Design)	4818.90.00

Now, the issue before me is not whether the toilet paper roll is the same as tissue paper. Neither am I called to determine whether the tissue paper having been converted into Toilet Paper Roll, Face Tissue Paper & Paper Napkin can still be referred to as 'Tissue Paper'. I have seen some of the samples. The applicant has requested determination of the rate of tax on 'tissue paper'. Therefore, I would restrict these determination proceedings in respect of the applicant to the said product. More importantly, the 'tissue paper' should satisfy the description as mentioned in the Trade Circular against the CETH 4818 as the whole exercise of deliberating on 'prospective effect' would arise only if the product satisfied the description which was clarified as being falling in the schedule entry for 'paper'

Coming back to the request for prospective effect then, it is seen that goods of the following description as specified against the CETH's 4803 and 4818 (under which the impugned product is claimed to be covered) were clarified by Trade Circular No.35T of 2005 dt.09.11.2005 as falling in the schedule entry C-70 for 'paper' :

4803	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes.
4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles.

Thereafter Trade Circular No.7T of 2010 dt.03.02.2010, while clarifying the types of 'paper' that would be covered by the aforesaid schedule entry, stated that the earlier Circulars in respect of this entry stood withdrawn. Further to that, the CETH's clarified for the purposes of this Circular did not include the headings 4803 and 4818. The Circular No.7T also clarified that the same shall take effect from the date of its issuance i.e dt.03.02.2010. While elaborately

analyzing the circumstances as available, it was observed that it is quite likely that the Circular guidelines would have been made applicable for the period from 2005-06 to dt.02.02.2010. And therefore in keeping with the principles of natural justice, the benefit of prospective effect was given during this period. While observing that the Trade Circular had rendered a case of statutory misguidance, it was categorically declared that the same would hold true, only if the applicants' therein had collected taxes @4% instead of @12.5% and if the tax collection was in excess of 4%, then no case for prospective effect could be made out. The aforesaid observations would hold good in the present case, too.

During hearing, the applicant has sought to make a point that similar issue on identical facts in respect of the product 'tissue paper' has come up in other cases, too and therefore, prospective effect may also be granted to similarly situated dealers. The suggestion seems practical and therefore, I am inclined to accept the same and I find that I am suitably authorized to do so by way of an enabling provision under section 56(2) of the MVAT Act,2002 empowering me to protect the liability. The provision reads thus :

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

I would like to deal herein one more issue. It is seen that though the applicant has asked for determination in respect of 'tissue paper' only, he is selling 'toilet paper' too and which was included and subsequently deleted from the scope of the impugned schedule entry C-70 for 'paper'. Thus, there would arise issue of statutory misguidance in respect of this product too. Further, in the Determination Order in the case of M/s. Paper Kraft Mfg. (I) Pvt. Ltd. and M/s. M.H. Enterprises (cited supra), prospective effect was granted to 'toilet paper' too as the products under consideration were Toilet Paper Roll, Face Tissue Paper, Paper Napkin, Tissue Paper (Party Pack & Mini) and Tissue Paper Roll. In view thereof, in keeping with the principles of natural justice, I feel it would be fair for me to deal herein with the issue of prospective effect in respect of tissue paper and toilet paper as well. Before dealing with the same, I would have to categorically stress herein as follows :

1. By Determination Order in the case of M/s. Paper Kraft Mfg. (I) Pvt. Ltd. and M/s. M.H. Enterprises (cited supra), it has been held that the products namely toilet/tissue paper are products not understood to be 'paper'.
2. A product whether covered by any entry would have to be determined on the basis of the words used for the purposes of the entry.
3. The prospective effect in respect of the products toilet/tissue paper is given in view of the statutory misguidance caused by the impugned Trade Circular.

It is therefore held that prospective effect for the period from 2005-06 to dt.02.02.2010 would be available to the applicant and similarly situated dealers only if the following conditions are fulfilled :

1. *There was statutory mis-guidance in view of the Trade Circular No.35T of 2005 dt.09.11.2005.*
2. *The products 'tissue paper' and 'toilet paper' should answer the description against the Central Excise Tariff Heading 4803 and 4818 as mentioned in the Trade Circular No.35T of 2005 dt.09.11.2005.*
3. *There is tax collection and payment @4%.*
4. *There should not be tax collection and payment @12.5%.*

04. In view of the deliberations held hereinabove, it is determined thus :

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

No.DDQ-11-2014/Adm-6/18/B-2

Mumbai, dt. 14/11/2014

It is determined thus :



1. As determined in the Determination Order No.DDQ-11-2010/Adm-3/10 & 16/B-6, dt.04.03.2013 in the case of M/s. Paper Kraft Mfg. (I) Pvt. Ltd. and M/s. M.H. Enterprises, the product 'Crepe Tissue Paper' is not covered by the entry 70 for 'paper' as appearing in the Schedule C appended to the Maharashtra Value Added Tax Act, 2002. The same stands covered by the residuary schedule entry E-1 of the said Act, thereby taxable @12.5%.
2. The applicant and other similarly situated dealers would get the benefit of prospective effect for the period from 2005-06 to dt.02.02.2010 only if the conditions as enumerated in para 03 of the proceedings of this determination order are fulfilled.



14/11/14

(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI