

**Read :**

1. Application dt.28.06.2006 by M/s. Grass Impex Pvt. Ltd.
2. Application dt.07.10.2009 for grant of prospective effect.
3. Hon. Maharashtra Sales Tax Tribunal order dt.12.09.2012.
4. Letter dt.04.08.2011 from M/s. Grass Impex Pvt. Ltd.
5. Letter dt.17.01.2013, dt.24.05.2013 & dt.26.06.2013 calling for details.
6. Submission dt.10.07.2013 and dt.18.12.2013.
7. Letters dt.21.06.2011, dt.15.07.2011, dt.29.10.2013 and dt.30.10.2013 calling for hearing.

**Heard :** Shri P.C.Joshi, Advocate with Shri Talathi, Chartered Accountant.

## **PROCEEDINGS**

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

**No.DDQ-11/2012/Adm-6/Remand/73/B- 2**  
**No.DDQ-11/2009/Adm-3/45**

**Mumbai, dt. 9/07/2014**

The applicant, M/s. Grass Impex Pvt. Ltd., holder of TIN27780006503V, is situated at 2, Sunder Villa, S.V.Road, Santacruz (W), Mumbai-400 054. The brief facts of the case are:

- The applicant through letter dt.28.06.2006 informed that they are engaged in the business of supply/installation of Solar Control Films, Safety & Security Films & Decorative Polyester Window Films imported from USA and cleared under Customs Tariff heading No.39.20 which is included in the notification for industrial inputs and packing materials. It was informed that the same are used in automotive industry & construction/architectural industry. It was further informed that in automotive industry, the same are installed on car windows and in architectural/construction industry, the same are installed on outside glass panels, glass windows & office partitions etc. The queries raised were :
  1. *Whether we are justified in charging VAT @4% in the Tax Invoice on the basis of the above said notification for industrial inputs and packing materials?*
  2. *Whether our business activity of installation of films is covered under Work Contract? If yes, then what will the rate of tax to be charged?*
- By letter dt.24.09.2009, the applicant was informed that the issue of rate of tax on 'Sun Control Film' was decided through the determination order No.DDQ-11/2007/Adm-3/44/B-1 dt.26.08.2009 in the case of M/s.Opulent Auto Care Pvt. Ltd.
- By letter dt.07.10.2009, it is submitted that since the determination order in M/s.Opulent Auto Care Pvt. Ltd. is applicable to the applicant, even the prospective effect of determination till dt.26.08.2009 is applicable to the applicant and therefore, to pass necessary orders in the applicant's case. It was informed that the applicant has started collecting VAT @12.5% from dt.30.09.2009 as the letter from the Department was received on dt.29.09.2009. It was further informed that for past transactions, tax is collected @4% only and it is practically difficult now to collect the differential tax from the customers. Hence, it is requested to pass orders protecting the company for past transactions.
- In appeal by the applicant before the Hon. Maharashtra Sales Tax Tribunal (MSTT), it was ordered in decision dt.12.09.2012 (in VAT Appeal No.57 of 2009) to decide the application on merits in accordance with law, after giving an opportunity of hearing to the appellant.

It is in these circumstances that I am called upon to decide the questions raised in the present proceedings.

## 02. HEARING

A hearing in the matter was fixed on dt.26.11.2013 when Shri P.C.Joshi, Advocate alongwith Shri Talathi, Chartered Accountant attended the hearing. It was submitted thus :

1. The bill for determination is of dt.26.02.2007 and the item sold therein is "Lumar Decorative Film". "Lumar" is the brand name. The applicant is importing and reselling. The product is cleared under Central Excise Tariff Heading (CETH) 39206929.
2. The applicant has charged VAT @4% under entry 54 of Schedule 'C'.
3. The applicant submitted other bills, the details of which are :

Bill No. & dt.	Description	Customer	CETH
S/06-07/0580 dt.09.06.2006	NRM PS2 (Clear Frost) LLumar Decorative Film 7 Mil LLumar LLumar Safety & Security Film	Ensemble Infrastructure Ltd.	39206929
S/06-07/2555 dt.26.02.2007	NRM PS2 (Clear Frost) LLumar Decorative Film	Mumbai Metro One Private Limited	- do -
S/06-07/0456 dt.26.05.2006	AIR 75 LLumar Solar Control Film	Auto Sonic	- do -
S/06-07/1572 dt.19.10.2006	7 Mil LLumar LLumar Safety & Security Film	Taj President	- do -
S/06-07/0580 dt.09.06.2006	NRM PS2 (Clear Frost) LLumar Decorative Film 7 Mil LLumar LLumar Safety & Security Film	Ensemble Infrastructure Ltd.	- do -
S/06-07/2313 dt.29.01.2007	Magnum NT 100 LLumar Solar Control Film	ICICI Bank Limited-V	- do -

4. The point of whether the activity of installation of films amounts to works contract is not being pursued by the applicant and only the rate of tax question is being pursued.
5. The applicant was requested to give the set of documents with regard to the purchase bills of 2006-07 such as Bill of Entry, Purchase Order, etc.
6. A copy of the decision in M/s. Scratchguard (Overseas) Pvt. Ltd. (VAT Second Appeal No.3 of 2011 alongwith Miscellaneous Application No.82 of 2011 dt.08.01.2013) was submitted to make a point that the product therein was also a polyester self adhesive film and the issue was whether cutting of films into different sizes places the product out of the CETH 3919 and it was held by the Hon' MSTT that the theory of end use fails and the product though cut in sizes falls in CETH 3919 as notified for schedule entry C-54.
7. As regards the application for prospective effect, it was submitted thus :
  - a. Prospective effect has been granted in the DDQ dt.26.08.2009. Hence, the same should be applied in the applicant's case.
  - b. It is requested that the prospective effect should be granted from the date of the determination order in the applicant's case.

## 03. OBSERVATIONS

I have gone through the facts of the case. Since the applicant wishes to pursue only the question as regards the rate of tax, I would restrict the present proceedings to the same.

The products placed for determination are Solar Control Films and Safety & Security Films. These are reproduced in the Table in the preceding para. As mentioned above, the applicant was informed earlier to arrange his affairs in terms of the

determination order in the case of M/s.Opulent Auto Care Pvt. Ltd.(cited supra) on the issue of 'Sun Control Film'. This determination order has not been challenged before the Hon. MSTT and holds good on the issue of rate of tax on 'Sun Control Film'. Therefore, it would not be required to dwell at length on the issue if the facts in the said case are similar to the present one. To ascertain the same, I would look at the facts in the present case thus –

1. It is informed that the impugned products are cleared under CETH 39206929.
2. The notification for industrial inputs for the purposes of schedule entry C-54 of the MVAT Act,2002 covers the heading 3920.
3. The description against the heading 3920 under the Central Excise Tariff and the one for the purposes of the notification is thus :

Central Excise	Notification dt.01.09.2005
Other plates, sheets, film foil & strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.

4. From the point 3 above, it can be seen that the description against the CETH 3920 for the purposes of the notification and as appearing under the Central Excise Tariff is the same. Therefore, it is the case that the entire CETH 3920 has been notified for the purposes of the schedule entry for industrial inputs and packing materials.
5. The details of the impugned products are thus :
  - a. The products for determination are Safety & Security Film, Solar Control Film and Decorative Film of the Brand LLumar.
  - b. As the names suggest, the products are to be installed on cars or in homes/offices to obtain the desired results of safety, sun prevention or decorative purposes.
  - c. The advertisement of the products on the website of the applicant is thus :

#### GRASS IMPEX WEBSITE

The products of the applicant are placed under two categories – Automobile and Architecture. 'LLumar Window Films' are found under both the categories.

#### Automobile category

*LLumar high performance films are designed to provide highest levels of solar heat rejection thereby providing Safety, Comfort & Style. LLumar is the world's #1 brand of polyester window films from CP Films USA. LLumar Films also block upto 99% of harmful UV rays preventing premature fading of upholstery & skin cancer. Llumar films are made using using various State-of-the-art technologies to ensure long lasting colour fastness, excellent optical clarity, highest heat rejection & provide zero interference with mobile & GPS signals.*  
*From virtually zero Brand presence in India earlier, today LLumar window films has become a leading brand in India both in Auto & Archi segment. LLumar today is approved accessory supplier to virtually all the major OEM's eg. Mahindra Renault, Tatas, Volkswagen, Honda, and we are likely to tie up the other major OEM's in the next few months. Major LFR's like Reliance Autozone, Carnation also sell "LLumar" from their store.*

#### Product Benefits

*High Solar heat rejection  
Prevents fading of car interiors*

Helps Improve aesthetics  
 Helps Increase fuel efficiency by reducing cooling load  
 Protection against vandalism, glass breakages etc.  
 Overall Provides Safety, comfort and style

**Architecture category**

LLumar architectural window films are designed to provide the  
 1. Highest levels of solar heat rejection  
 2. Highest variety of decorative films  
 3. Highest levels of protection against bomb blasts and vandalism thus providing Safety, Comfort & Style.

LLumar is the world's # 1 brand of polyester window films from CP Films USA. LLumar Films also block upto 99% of harmful UV rays preventing premature fading of upholstery & skin cancer. LLumar films are made using various State-of-the-art technologies to ensure long lasting colour fastness, excellent optical clarity.

From virtually zero Brand presence in India earlier, today LLumar window films has become a leading brand in India. LLumar window films have been installed at various prestigious sites. To name a few : SEBI-Mumbai; Reliance Industries-Vashi; American Express-Gurgaon; Australian High Commission-New Delhi SBI-Belapur, Thane; G-7 Mall, Prime Mall, R Mall-Mumbai; Bosch India-Bangalore; Marriott hotels All India; NSE-Mumbai; UNICEF-WFP UN projects all India; DLF constructions-gurgaon, Chalet hotels-pan India; Oberoi hotel-Mumbai.

**Product Benefits**

Reduce cooling loads in glass buildings by rejecting solar heat.

Beautification of building facades.

Beautification of interior glasses via decorative films.

Privacy via frosted films.

Protection against vandalism, glass breakages, bomb blasts.

Providing Human safety by reducing shrapnel's being formed from glass breakage due to bomb blasts.

**WRITE-UP GIVEN BY THE APPLICANT**

Details of Window films

Particulars	Solar Control Films	Safety & Security Films	Decorative Films
Type	Polyester Window Films	Polyester Window Films	Polyester Window Films
Excise/ Custom Chapter Heading	3920.6929	3920.6929	3920.6929
Technical Specification	Built from tough polyester laminates & metalized coating bonded by adhesives.	Heavy duty polyester window films bonded by special aggressive adhesives.	Polyester films designed as retrofit product to enhance glass aesthetics.
Thickness Adhesives	50 microns PS & CDF adhesives	100 microns- 375 microns PS adhesives	50 microns PS adhesives
Use	<ul style="list-style-type: none"> <li>- Protection from heat. Reduce the cost of cooling by rejecting up to 79% of the sun's heat to enhance Air conditioning of the premises. Environment friendly, Green product that helps achieve up to 7 LEED points.</li> <li>- Block 99% of the sun's damaging ultraviolet rays that cause cancer of the skin. Also, stops premature fading of furnishings.</li> <li>- Reduce harsh, uncomfortable glare.</li> <li>- Provides privacy, letting in light but guarding against prying</li> <li>- Adds style to building for a fraction of the cost of other</li> </ul>	<ul style="list-style-type: none"> <li>- Provides powerful barrier &amp; protection that helps to hold shattered glass upon impact. Protects against impact from the bomb blasts, terrorist attacks or accidental breakages.</li> <li>- Dramatically reducing damages or likely hood of injury from flying glass keeping people and premises safer and more secure in event of any natural calamities</li> <li>- Provide brilliant optical clarity without distortions, yellowing or a cloudy overcast.</li> <li>- Offer highest durability in the industry and feature a</li> </ul>	<ul style="list-style-type: none"> <li>- Decorative films are cost effective, Versatile alternative to expensive etched glasses and are easily removed and replaced when a new look is desired.</li> <li>- used alone or with combined with patterned film, these visually appealing films can complement any interior design and can eliminate the need for blinds for privacy - semi privacy</li> <li>- Decorative films inspire creativity and flexibility. Computer cut images allow limitless design possibilities, may be customized to allow for</li> </ul>

	refurbishments without the inconvenience of relocating tenants.	patented scratch resistant coating.	brand logos and corporate image enhancements.
Life of the films	More than 7-10 years	More than 10 years	More than 5 years
Application process	Professional installation techniques with special tools used by trained installers	Professional installation techniques with special tools used by trained installers	Professional installation techniques with special tools used by trained installers
Where they are sold	<p>Sold all across India through set channels of dealers &amp; distributors</p> <p>Sold to :-</p> <ul style="list-style-type: none"> <li>-: Automotive dealers</li> <li>-: Automotive OEM Car manufacturing companies e.g Maruti, Volkswagen, Tata motors, Honda, Hyundai, Fiat</li> <li>-: Direct projects to Banks, 5 star Hotels, Shopping Malls, Air Ports, Corporate Companies etc</li> </ul>	<p>Sold all across India through set channels of dealers &amp; distributors</p> <p>Sold to:-</p> <ul style="list-style-type: none"> <li>-: Distributors &amp; Channel Partners</li> <li>-: Direct projects to Banks, 5 star Hotels, Shopping Malls, Air Ports, Corporate Companies etc</li> </ul>	<p>Sold all across India through set channels of dealers &amp; distributors</p> <p>Sold to:-</p> <ul style="list-style-type: none"> <li>-: Distributors &amp; Channel Partners</li> <li>-: Direct projects to Banks, 5 star Hotels, Shopping Malls, Air Ports, Corporate Companies etc</li> <li>-: Architects, Interior designers etc.</li> </ul>

Grass Impex Pvt. Ltd. is a sales & marketing company. Grass Impex Pvt. Ltd. is the sole distributor & importer of LLumar polyester films from USA. These polyester films made out of plastic sheets of different gauge. Films are marketed as Solar Control Films, Safety and Security Films or Decorative Polyester Films. The functional utility of these polyester films is the application on glass windows (buildings) and automobile windows. The polyester film imported are majorly in rolls in dimensions of 5' x 100'. Following are the different types of polyester films & details :

**\*Solar Control Window films:**These polyester films are applied on the front façade or windows of the glass buildings for making the buildings Energy efficient and to save energy costs substantially.

**\*Safety & Security films:**Safety & Security polyester Films are applied on the building glasses exterior as well as interior for safety purposes. These films help glasses to become Shatter Resistance in case of any impact. These films are also used for Blast Hazard Mitigation and Bomb blast resistance.

**\*Decorative Films:**These are decorative polyester films which help in achieving primacy/semi-privacy and decoration of the Glass Partitions. There are various pre-patterned designs of these films.

#### Solar Control Window Films

Energy Saving Window Films can boost the performance of nearly any glazing system, significantly reducing energy consumption and peak demand. Professional energy audits estimate that buildings retrofitted with energy saving films could realize annual energy savings as high as 15% to 25% with improved HVAC efficiency, reduced carbon emissions and an average payback within three years. Made from tough polyester laminates and bonded coatings, Energy Saving Window Films:

- Reduce solar energy heat gain by up to 85%
- Block 99% of damaging UV rays
- Improve occupant comfort by reducing heat and glare
- Low-E (low-emissivity) films improve insulating properties for year round savings
- Light pollution Reduction
- Protect assets and human from harmful UV rays
- Window films can significantly reduce energy consumption.

#### Decorative / Frosted/ Privacy film

These films will help to add privacy to private spaces while making a bold design statement. It can replicate the premium look of sandblasted glass, create unique patterns, add color, or intricate layered designs - all without sacrificing natural light or aesthetics. It's the perfect balance between function and style, making it ideal for almost any application. From residential to commercial, retail to hospitality, the possibilities are endless.

- Improve building's external appearance.

### **Safety & Security / Blast Resistance Films**

In today's world, crime, vandalism, terrorism, natural disasters, and everyday accidents are real concerns. Made with thick, heavy-duty polyester bonded by strong adhesives, safety and security films provide an optically clear yet powerful barrier that helps hold glass in place should impact occur. Danger from windborne debris, seismic tremors, and accidental impact can be greatly reduced. It is also ideal for use in high- traffic areas with windows or other surfaces vulnerable to "smash- and- grab" theft or vandalism.

From corporate and retail to hospitality and educational applications, high- performance films can help to control or even eliminate the danger and damage caused by broken glass in new construction and retrofit projects. Strong, clear safety and security films offer a broad range of solar and aesthetic solutions to compliment the demands of any commercial project. Solar films are designed to meet international standard, come with a factory- backed warranty, and are professionally installed.

- Holds shattered glass in place upon impact
- Protect from hazards of flying glass during bomb blasts & explosions.
- Provides glass securities in the event of Riots, forced entry & burglary
- Secures Glasses during earthquakes, Cyclones and other natural disasters.

### **Residential Window Films- Protection and Peace of Mind**

• Your home is your largest investment. LLumar can help you protect that investment by giving you control over the things that matter most. Professionally installed LLumar window film will greatly enhance the energy efficiency, look, and functionality of your window. This translates into lower utility bills, improved comfort, added privacy, and greater protection against the unexpected.

- Control of Sun

Windows are an important part of any home, from the light they let in to views they reveal. However, they also create a host of problems ranging from excessive glare, heat build-up and high energy costs to the premature fading of carpets, furniture and draperies. LLumar window film can help you control these problems while providing increased comfort and lower overall energy costs.

### **Save up to 40% on Cooling Energy Costs**

Windows play an important role in regulating heat energy in your home, and according to the EPA Energy Star Buildings Manual in the United States, approximately 50 % of an average home's utility bills are wasted by loss of heat and heat gain through untreated windows. LLumar window films can lower heating and cooling expenses by rejecting solar heat from the outsides, eliminating hot and cold spots inside, and helping to prevent heat from escaping.

### **Stop the Effect of Harmful UV Rays**

Most fabrics, furnishings and artwork can be damaged and fade simply by allowing daylight to pass through an untreated window. By blocking more than 99% of all UV rays, LLumar window film offers UV protection for your home. It will help preserve the color of your furnishings, fabrics and carpets, and help protect fine antiques, woods and works of art from discoloration and fading.

UVA rays streaming through your home windows not only adversely affect your furnishings, but are damaging to your skin and may contribute to wrinkles, photo damage, or worse...lead to cancers of the skin. LLumar window film with UVShield™ technology was made specifically for UV protection for your family.

- Make your home more comfortable, reduce energy costs and protect your interior furnishings from fading.
- Protect Your Family
- Glass can be a real hazard in the home when broken from accidents, storms, or break-ins. LLumar helps you defend against the unexpected.
- Add Style & Privacy
- With LLumar, you can increase your privacy or create unique designs on nearly any glass surface in your home.
- Avoid Window Replacement
- Did you know cost for quick, professional window films installation is about one-tenth the cost of replacement window and it's better for the environment?

### **Automatic Solar Control Films**

#### **Solar Protection**

The sun's rays can cause a car's interior to become unbearably hot. Installing a high performance window film can reduce car's interior surface temperatures by as much as 16°C

(29°F)...creating a more comfortable ride, lessening the burden on the air conditioning system, and saving fuel.

#### **Ultraviolet Protection**

Ultraviolet (UV) rays can cause damage to a vehicle's interior- and to human skin. window film with UVShield technology forms a protective barrier that blocks up to 99.9% of UV rays, which keeps car's interior looking newer, longer, and shields passengers from UV exposure that can contribute to skin cancer.

#### **Additional Protection for Windscreens**

A cooler interior starts at windowscreen! These technology advanced films offer extraordinary level of protection from infrared and ultraviolet rays.

d. The advertisement of the products on the website of LLumar is thus :

#### **LLUMAR WEBSITE**

The website also advertises 2 types of Window films - Automobile and Architecture.

#### **Architectural Window Films**

##### **Solar Control Window Films**

LLumar solar control films are designed for commercial and home applications where damaging ultraviolet light, heat, and glare are problems, energy efficiency is important, or a new look is desired.

Lower energy costs - LLumar window films reduce heat loss through windows by improving glass insulating performance as much as 92%. In warmer climates, LLumar window film reduces cooling costs by rejecting up to 82% of the sun's heat.

Block heat and glare - LLumar window films help to correct temperature imbalances in a building, improving comfort and deflecting harsh, uncomfortable glare.

Reduce fading - LLumar solar control window films filter out more than 99% of the harmful ultraviolet rays that cause fading in fabrics, furnishings, and display merchandise.

Improve appearance - LLumar window films can add new style to a building's façade for a fraction of the cost of other refurbishments without the inconvenience of relocating tenants.

Enhance privacy - Reflective LLumar window films will let in light but provide privacy during daylight hours. Blackout (opaque) films are available for spandrel glass applications and a range of frosted decorative films are available for interior privacy.

##### **Energy Savings Window Films**

LLumar energy saving window film can boost the performance of nearly any glazing system, significantly reducing energy consumption and peak demand. LLumar energy saving window film can boost the performance of nearly any glazing system, significantly reducing energy consumption and peak demand. Professional energy audits estimate that buildings retrofitted with LLumar energy saving window films could realize annual energy savings from 5-15% with improved HVAC efficiency, reduced carbon emissions and an average payback often within three years. Plus, window films often qualify for utility company rebates making them more cost effective.

##### **Safety and Security Window Films**

LLumar safety and security window films provide a clear, powerful barrier of protection that helps to hold glass in place when it shatters due to lethal storms, earthquakes, explosions, vandalism and accidental breakage. LLumar protective window film helps guard against the unexpected. Help protect all your precious resources - human as well as financial - with LLumar security window film. Made of a clear, heavy-duty polyester compound, LLumar safety film provides a thin, transparent protective barrier against these threats. LLumar protective window film helps guard against:

- Bomb blast and severe weather- helps reduce damage and likelihood of injury from flying glass
- Forced entry - makes it harder for thieves to "smash and grab" retail display merchandise
- Graffiti - when vandals strike, the transparent film is peeled away -along with the graffiti

##### **Decorative Window Films**

LLumar frosted window films give the appearance of expensive etched glass, come in different patterns and textures and are easily removed and replaced when a new look is desired in your home or office. Etched glass panels provide a beautiful means of creating an entirely new environment of space, light, and beauty, but they can be costly. Frosted, patterned films can be easily applied vertically, horizontally or diagonally to create stunning effects on existing glass. Product benefits include:

Flexible design - LLumar decorative window film allows you to bring color, visual effects and graphic patterns to glass surfaces or customize a space with a corporate logo that can be removed and replaced when a new look is desired.

**Enhanced privacy** – Frosted window films allow light to pass through glass while protecting privacy in homes, offices, and commercial environments. It's become a popular solution in creating privacy on office partitions.

**Glare reduction** – Frosted window films reduce eye strain and help improve conditions for office employees and building tenants.

**Cost effective** – Etched glass is an expensive option when compared with these aesthetically pleasing and versatile window film treatments.

**How does architectural window film work?**

Window film is a sheet of strong polyester laminate treated in variety of ways to improve the look and performance of existing windows. One side has a scratch-resistant coating and the other has an adhesive that bonds the film to the glass surface. Architectural window films work by controlling the passage of solar energy into room spaces, improving the insulating performance of windows, providing endless decorative opportunities, or substantially reducing the safety and security hazards associated with fragile, easily shattered glass.

#### **Automotive Window Films**

##### **Automotive Tint and Paint Protection Film**

**High performance automotive window tint and paint protection film.**

A high-gloss, virtually invisible shield, LLumar automotive paint protection film shields your car from the damages of everyday driving. The ultimate defense against road rash: rocks and pebbles, road debris, road salt and sand and protection where you need it most. When it comes to protecting what matters most, the overall durability of LLumar paint protection film is up to 33% thicker than the leading competitor's and offers the strongest defense yet when it comes to shielding the areas of your vehicle that are most vulnerable to damage, such as the hood, bumpers, door edges, handles and steps, side-view mirrors, rocker panels and fenders.

##### **Tinted Window Films**

With LLumar automotive window tint you get it all – high style and high performance – including protection from dangerous ultraviolet (UV) rays, distracting glare and heat build-up.

**High performance and protection**

LLumar automotive window tint will:

- block more than 99% of the sun's harmful ultraviolet (UV) rays
- help protect against skin damage
- protect your auto's interior from fading and cracking
- help reduce glare and eye-strain

**Trusted durability**

##### **Automotive Paint Protection Film**

A high-gloss, virtually invisible shield, LLumar automotive paint protection film shields your car from the damages of everyday driving. The ultimate defense against road rash: rocks and pebbles, road debris, road salt and sand and protection where you need it most.

#### **Clear Window Films**

LLumar clear film is practically invisible and blocks more than 99% of harmful UV rays while reducing heat from the sun by 50%. While all the products in the LLumar window film line offer UV protection, the AIR80 clear film appeals to people who do not want the darker window appearance or where the use of dark window tint is prohibited by state laws. Even though it is clear and almost invisible, LLumar AIR 80 window film still blocks more than 99% of harmful ultraviolet rays, which are the leading known cause of skin cancer and premature skin aging, and also causes fading and cracking of automotive interiors. LLumar AIR 80 window film uses nano-ceramic technology to achieve its extraordinary level of protection. Designed with your car's electronic accessories in mind, it does not interfere with cell phones, radios, radar detectors or global positioning systems.

##### **Factory-installed privacy glass vs. high performance window film**

There's a big difference between the two: factory glass is intended to provide privacy and does not provide complete solar control like window film. Since children and pets are often passengers in the rear seats of SUV's, crossovers and mini-vans, it's important to know that LLumar window film can be applied to privacy glass to protect them from UV rays. Plus, everyone's ride will be more comfortable, as LLumar window film can reduce interior surface temperatures by up to 30 degrees F°. Proudly made in the USA, LLumar films are durable and virtually maintenance free. In fact, when professionally installed by trained technicians, LLumar window films are guaranteed to stand up to the test of time.

**How does automotive window film work?**

Automotive window tint is a sheet of strong polyester laminate treated in variety of ways to improve the look and performance of existing windows. One side has a scratch-resistant coating

and the other has an adhesive that bonds to the glass window. Solar control tints for auto glass work by selectively controlling the passage of the sun's radiant energy into a vehicle, reducing cabin temperatures, enhancing outward visibility by reducing harsh glare, and nearly eliminating the damaging and dangerous effects of ultraviolet light on upholstery and our skin and eyes. Because the sun's energy is composed of ultraviolet light, visible light, and near infrared radiation, our high-tech films with high optical clarity have been constructed to independently regulate the passage of these three bands of energy to suit the different needs of consumers. You can choose films that:

- filter out only ultraviolet (UV) rays
- reduce visible light to control glare and improve a car's appearance
- block both UV and most solar infrared to reduce heat without changing the appearance of the glass

#### Product Benefits

##### For Car Owners

*Protect Yourself From Dangerous UV Rays*

*Avoid high temperatures and distracting glare*

##### Style and Appearance

*Paint Protection*

##### For Home Owners

*UV Protection*

*Control Heat and Glare*

*Protect Your Family*

*Add Privacy and style to your home*

*Ensure Comfort and Safety Without Window Replacement*

##### For Architects & Designers

*Energy Efficiency*

*Increase Comfort and Productivity With Solar Control Window Films*

*UV Window Films*

*Shatter Protection*

*Designer Window Film*

*Commercial Property Owners & Facility Managers*

*Save Energy*

*Comfort and Productivity*

*Ultraviolet (UV) Protection*

*Security Window Films*

*Designer Window Films*

*Anti-Graffiti*

From the above description of the products, I gather the following inferences :

1. The products are designed to cater to automobiles, offices and homes.
2. The products offer protection from Ultraviolet rays, heat and glare, shatter and also offer style and comfort.
3. They are described thus :
  - a. .... *Window film is a sheet of strong polyester laminate treated in variety of ways to improve the look and performance of existing windows.*
  - b. .... *can add new style to a building's façade.*
  - c. .... *are easily removed and replaced when a new look is desired in your home or office.*
  - d. .... *provide a beautiful means of creating an entirely new environment of space, light, and beauty*
  - e. .... *to create stunning effects on existing glass.*

f. .... *Factory-installed privacy glass vs. high performance window film - There's a big difference between the two: factory glass is intended to provide privacy and does not provide complete solar control like window film.*

4. The products are not inputs to any industry. The very explanation given about difference between 'Factory-installed privacy glass vs. high performance window film' shows that the products do not form part of the goods which come out of the factory. These products are installed by the individual customers if they desire the comfort provided by these products.
5. They are not part of any manufactured product. For e.g. automobiles do not have them on the windows as they come out of the factory gates. Even offices and homes could not be said to be having them while they are being constructed. These are special purpose films which are installed later on as per the need, desire or liking of the user.
6. It cannot be said that the products are raw materials from which any finished product could be said to have been manufactured.
7. The products are not a necessity but are used for comfort and style.
8. They do not come as a part of any packaged product.

Thus, it could be concluded that the impugned products are used as a protective covering and not as an industrial input. The impugned products come into picture after products i.e. automobiles have been manufactured or buildings have been constructed. A Booklet showing the different types of films mentions a 'Disclaimer' clause thus - "*Grass Impex Pvt. Ltd. is not responsible for automotive window film tint compliance with the laws of any State where the vehicle may be plied. You must therefore determine whether such window film tint is in compliance with any such laws. Do not install any film product in violation of law.*". The Disclaimer clause seeks to confirm the position that the impugned products are not inputs to industrial products. Their installation is governed by the user's desire and not dependant on the manufacturer. Thus, the impugned products used on cars do not come into picture at the factory manufactured stage. Having seen thus, I would now refer to the inferences on the basis of which the determination order in the case of M/s. Opulent Auto Care Pvt. Ltd. (cited supra) was passed :

*"It is not an input which is essential to the manufacturing of a product. It cannot be termed as a 'raw material' or an 'input' from which a finished product can be prepared.... .... .... the product does not have a use in the manufacturing of a product, let alone industrial products. The product is a shield which is to be applied or fitted on the buildings, cars so as to get the needful protection from the sun.... ... The automobiles/buildings in which the impugned product finds application can be manufactured/built without using the said product. The*

manufacturing process will not halt or be interrupted by the non-use of the product. Take for instance, the use of the product in the automobile industry. When a car/motor vehicle comes out of the factory, it is not the case that the impugned Sun Control Film is found pasted to the windows or for that matter the glasses fitted in the cars. The impugned films are pasted on glasses or window keeping in view the comfort of the driver & passenger therein. Thus the impugned product is fitted later on to the car if the person desires comfort and protection from the heat of the sun. ... The basic property of the product is that it provides protection against the infrared and ultraviolet rays of the sun. From this property, one can easily make out that the product does not have a use in the manufacturing of a product, let alone industrial products. The product is a shield which is to be applied or fitted on the buildings, cars so as to get the needful protection from the sun.... ....The product is treated by them as not a necessity but as an additional comfort."

The above inferences in M/s. Opulent Auto Care Pvt. Ltd.(cited supra) are similar to the ones made by me in the present proceedings. It is, therefore, felt that the observations in the determination order in the aforesaid case would be applicable to the present case and which are :

1. " The notification is for the purposes of the schedule entry for industrial inputs and packing material. Now, "industrial inputs" and "industrial packing materials" is not a terminology under the Central Excise Act. It is a conscious decision of the Government of Maharashtra to introduce such an entry so as to provide the needful impetus to the industry i.e the industrial sector.
2. Industrial inputs would mean those raw materials or components or parts which go into the manufacture of industrial goods. The product to qualify as an input should be an input to the making of the final product. In the determination order in the case of M/s. Samruddhi Industries [No.DDQ-11/2003/Adm-5/40/8-8, dated February 20, 2004], the then Commissioner of Sales Tax had an occasion to deliberate on the matter. It was observed therein that "Since the term 'Input' is qualified as 'Industrial Inputs' in the notification it does not include all input but only inputs of an industry. The very qualification for judicious interpretation shall equally be applicable to 'Packing Material' since they are placed together in conjunction by the word "and". As such the Entry C-I-29 covers Industrial Input and Industrial Packing Materials alone in it." The schedule entry for industrial inputs & packing material was introduced under the erstwhile Bombay Sales Tax Act,1959 with an intention to keep the industrial inputs at a rate equivalent to the Central Sales Tax Rate. Even under the present MVAT Act, 2002, we have the said entry for the special purpose of taxation of Industrial Inputs and Packing Materials at a lower rate of 4%. In the decision in the aforesaid determination order, certain products were held as not being industrial inputs as they were applied for household use. The aforementioned determination order was upheld by the Hon. Tribunal in its decision reported in 32 MTJ 226.
3. The prime consideration for coverage in the entry is that the product should be an input to an industry..... The product is treated by them as not a necessity but as an additional comfort. And if this is so the product cannot in any circumstances be covered by an entry which is specifically introduced to include industrial inputs which are indispensable for the manufacturing of any product. This would be contradictory to the intention behind the introduction of the entry. The then Hon. Finance Minister in his Budget Speech had the following to say about the introduction of the schedule entry C-I-29 under the then BST Act,1959 :

"The Hon. Members are aware that in Maharashtra the local manufacturers are entitled to claim set-off of the Sales Tax paid in excess of 3% of the purchase price of Raw Materials and Packing Materials. The present rates of tax on the most

important of the Raw Materials and Packing Materials are fairly high being of the order of the 13% ... This naturally induces manufacturers to purchase the same commodity from other States. I therefore propose to reduce the rate of Sales Tax of specified Inputs and Packing Materials to 4%. The list of Inputs and Packing Materials will be prepared by the reference to the Central Excise Tariff.

4. As observed by me earlier, the schedule entry is for "industrial inputs and packing materials". The schedule entry is very specific in its import. It is not for all inputs and packing materials but inputs and packing materials to industry alone. Hence, the product has to first qualify for coverage by the terminology used in the schedule entry. If it is covered by the description used for the purposes of the entry, then it needs to be ascertained whether it is specified as a notified "industrial input and packing material" in the notification issued for the purposes of the schedule entry. The notification is for the purposes of the schedule entry and the schedule entry is the outcome of a conscious and deliberate decision of the intention of the Government reflected in the Statute and the Schedules appended to the said Statute. Hence, this should put to rest any counter argument that the product having been covered by the notification should be held as covered by the schedule entry. The intention behind introduction of the entry, the characteristics of the product, the use of the product and the common parlance understanding of the product need to be taken into consideration as they assume significance in the interpretation of the product vis-à-vis the schedule entry. Thus, considering the intention to introduce the schedule entry C-54 is to give impetus to the industry when it specifies certain goods to be of the nature of industrial inputs, the goods presented for determination do not appear to fit into the concept of industrial inputs as envisaged by the schedule entry C-54 of the MVAT Act, 2002.
5. Any particular Excise Heading covers a number and variety of articles. It would not be possible and practicable for the Legislation to identify all such possibilities wherein some goods are not covered by the schedule entry but are covered by the heading which is sought to be included. In such circumstances, the words used for the purposes of the schedule entry should be looked into and accordingly ascertained whether going by the nature of the product, the same should be included or excluded. The schedule entry comes before the notification and hence, in circumstances where the exclusion of certain products has not been provided for the following legal maxim applies - *Derivativa potestas non potest esse major primitiva* The power which is derived cannot be greater than that from which it is derived. Since the schedule entry itself bars entry to the product, the inclusion in the notification does not act otherwise."

I find that the above observations are squarely applicable to the facts of the present case. It would be useful to go through the contents of a copy of the letter issued by the applicant to the client in invoice no. S/06-07/0580 dt.09.06.2006. It states thus -

"As per our discussion held at your office you were keen to install Safety film and Clear frost film on your office glasses at Worli. We have taken the measurement for the same where Total sq. ft. for Clear frost film is 135 sq.ft. and for Safety film is 48 sq.ft which is including wastage."

What the above conveys is that the impugned products are not sold in bulk but are installed as per the specific requirements of the customer. And most importantly are not the inputs as are sought to be covered by the Legislation under the entry for 'industrial inputs'. These are finished products sold by the applicant as per the precise need of the clients and are certainly not the inputs to any industry. It was certainly not for giving impetus to such type of transactions that the Legislature in its wisdom has carved out this distinctive entry. The present products not being inputs to any industry, would not get

covered by the schedule entry C-54 of the MVAT Act, 2002 for "industrial inputs and packing materials".

Having observed thus, I would now look at the argument of the applicant in favour of coverage of the impugned products under the aforesaid schedule entry. In respect of reliance on the Advance Ruling under the Karnataka Value Added Tax Act, 2003, I have to state that the description as appearing therein is not the same as the one in the notification under consideration in the present proceedings. The applicant has also placed reliance on the decision in M/s. Scratchguard (Overseas) Pvt. Ltd. (VAT Second Appeal No.3 of 2011 alongwith Miscellaneous Application No.82 of 2011 dt.08. 01.2013). However, I find that the facts of the said case are not similar to the present one and further, the said decision is on the point of 'whether manufacture'. Further, the aforesaid decision has not been accepted by the Department. The issue similar to the one in the present proceedings was considered by the Hon. MSTT in the decision in the case of M/s. Samruddhi Industries (cited supra). The determination order dt.20.02.2004 in the case of M/s. Samruddhi Industries was upheld by the Tribunal through its decision dt.28.02.2005. My observations of the impugned products are based on the brochures advertising the said products as well as the description on the websites. In M/s. Samruddhi Industries (cited supra) too, the then Commissioner had referred to the advertisement of the products. With regard to the same, the Hon. Tribunal noted thus,-

*"A bare look at the description of the goods and the nature of advertisement for sale of the goods, undoubtedly establish that all the articles are mostly household articles and such type of articles can be rarely used in the industries. It may be that as submitted by Mr. Thakar, the items like Ghemela might be used in construction, agriculture etc. to some extent. But they can not be considered either as Industrial Inputs or Packing Materials as understood in common parlance, nor can they be considered as materials used for conveying the goods in the distribution channel towards the consumer. So, we are of the opinion that the conduct of the Commissioner of Sales Tax to read the Pamphlets of Advertisements to ascertain the nature of the goods is of relevant factor."*

The Hon. MSTT had the following to observe with regard to the entry for *Industrial Inputs* -

*"The plain reading of the entry indicates that the articles required for industrial purposes are only covered under the entry. ....the aims and objects to incorporate the entry is to give benefit in taxes for growth of the industry. This aim and object is discussed by the Commissioner of Sales Tax in his order and that cannot be disbelieved. According to us, in order to interpret the legal provisions, one has to go into the details of the aims and objects of bringing provisions in the Act."*

Further the Tribunal observed thus -

*".....it is claimed for .....the Appellant, that Court should interpret the statute to given situations which are before them and that in that connections the Courts are obliged to understand and consider the statute aright before proceeding to apply it to the facts.....it is claimed that ..... it is held that the Courts should not give much more importance to the*

explanatory head notes made by the Government Spokesmen, Ministers or Head of Departments, and other Bureaucrats. .... we certainly agree with the principle initiated in the ruling and the arguments ..... As far as this case is concerned, we are taking into consideration the nature of the goods in the matter before us to consider the Schedule Entry C-I-29 of the Bombay Act. We are interpreting the entry with the help of the relevant provisions and the views expressed by the Commissioner and the Applicant. Our comparative study conclusively says that the articles in dispute before us are rarely used in the industry or for packing material, but these are more useful for domestic purposes. At the time of classification, we cannot escape the intention of the Legislature to interpret the entry. Thereby we are not giving up the Speech of the Minister, but we are inferring the intention of the Legislature. When it's clear that in order to have growth of industries in the State, Government is intending to give benefit in tax for industrial purposes by inserting Schedule Entry C-I-29, we cannot interpret the domestic articles under this entry. So, with respect, we differ with the arguments ..... and say that these rulings are not applicable to the present case.....

What is material is what is the nature of the product and whether it answers the description 'Industrial Inputs and Packing Material'.....

.....Right from the inception of the Bombay Act, the endeavor of the Legislature was to keep at the minimum the tax incidence on the Industrial Inputs and the Packing Materials (including the conveyance materials), which go into the making and supply of the final manufactured product.....

..... Schedule Entry C-I-29 has to be interpreted to cover only the Industrial Inputs and Packing Materials which go in the making and supply of goods and which are notified by the Government for the purposes of the said Schedule Entry. "

With regard to the argument about the heading and sub-heading mentioned in the notification, the Hon. MSTT observed thus -

"It is not possible to uphold the argument because the notification was issued by the Government by holding an authority under Schedule Entry C-I-29, so the articles mentioned in the notification should have relevance to the Schedule Entry C-I-29. Hence, the articles which are referred in the notification should be considered useful for the industries or packing material required for industries."

Thus, the Hon. MSTT, therein, has affirmed the view of the Sales Tax Department that a product has to be an industrial input as such to qualify for coverage under the notification for the purposes of the entry for "industrial inputs and packing materials". The schedule entry C-54 uses the words 'industrial inputs' which means that the products are inputs to industries. The intention behind introduction of this class of goods namely "industrial inputs and packing materials" has been reflected in the Budget Speech of the then Hon. Finance Minister, the relevant portion of which has been reproduced in the determination order in the case of M/s. Opulent (cited supra). Every word in a statute has a meaning. It has to be in the interest of a fair interpretation of any legislation to give justice to the words used therein. Therefore, the impugned schedule entry would not cover any goods which do not fit into the scheme of things meant therefor. The present products are not inputs to any industry and are not the raw materials from which finished goods are

manufactured. Therefore, they would not get covered by the impugned entry. There is no other specific schedule entry under which the impugned products could be said to be falling. As such the products find place in the residuary entry, thereby taxable @12.5%.

#### 04. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect. It is informed that *when the applicant was communicated about the determination order in Opulent's case, the applicant readily accepted the proposition and started charging VAT @ 12.5% from the date of communication of Opulent's order.* However during hearing, it was requested that prospective effect should be granted from the date of the present determination order in the applicant's case. Since prospective effect was granted in the determination order in Opulent (cited supra), it is prayed that the same should be applied in the applicant's case. The claim of the applicant is in respect of the entry for 'industrial inputs'. Hence, first and foremost, the applicant should have been aware of the fact that the basic criterion for coverage under the said entry is that the impugned products should be an input to any industry. Whereas the facts were contrary to the intention of the entry and this is evident when the portrayal of the impugned products by the applicant as well as LLumar is seen. Secondly, the determination order in Samruddhi (cited supra) as well as it's confirmation in a decision by the Hon. MSTT should have left no questions to doubt. However, the applicant failed to take heed of any of the aforesaid. In the determination order in Opulent (cited supra), owing to the excise classification being covered by the notification, prospective effect was granted to the applicant therein. I am inclined to grant prospective effect in the present proceedings too. However, I find that the request to grant the same from the date of the present determination order is impracticable in view of the obvious circumstances surrounding the impugned entry as well as the exposition of the principal underlying the intention of the entry. Hence, I have to hold that the prospective effect in the present proceedings would be from the date of the determination order in Opulent (cited supra). However, I hasten to add that the prospective effect would be so applicable if the applicant has not collected taxes in excess of 4%.

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

#### ORDER

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

No.DDQ-11/2012/Adm-6/Remand/73/B- 2  
No.DDQ-11/2009/Adm-3/45

Mumbai, dt. 9/07/2014

1. *The rate of tax is determined thus -*

Bill No. & dt.	Description	Schedule entry	Rate of tax
S/06-07/0580 dt.09.06.2006	NRM PS2 (Clear Frost) LLumar Decorative Film 7 Mil LLumar LLumar Safety & Security Film	E-1	12.5%
S/06-07/2555 dt.26.02.2007	NRM PS2 (Clear Frost) LLumar Decorative Film		
S/06-07/0456 dt.26.05.2006	AIR 75 LLumar Solar Control Film		
S/06-07/1572 dt.19.10.2006	7 Mil LLumar LLumar Safety & Security Film		
S/06-07/0580 dt.09.06.2006	NRM PS2 (Clear Frost) LLumar Decorative Film 7 Mil LLumar LLumar Safety & Security Film		
S/06-07/2313 dt.29.01.2007	Magnum NT 100 LLumar Solar Control Film		

2. For reasons as discussed in the body of the order and if the applicant has not collected taxes in excess of 4%, the order is made applicable from dt.26.08.2009 i.e the date of the determination order No.DDQ-11/2007/Adm-3/44/B-1 dt.26.08.2009 in the case of M/s. Opulent Auto Care Pvt. Ltd.

  
 (DR. NITIN KAREER)  
 COMMISSIONER OF SALES TAX,  
 MAHARASHTRA STATE, MUMBAI