

Number : 232/CDVAT/2008
Issue Date : 23-03-2009
Subject : GPS Sensors & Indicators Pvt.

Ltd.

**IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI**

Vs.

**M/s.GPS Sensors Indicators Pvt. Ltd. K-14, Udyog Nagar, Peera Garhi, Delhi –110
041**

No.232/CDVAT/2008/ Dated: 23-03-2009

ORDER

Present for the Applicant : Shri A.K.Batra, Chartered Accountant.
Present for the Department : Shri Nitya Nand, D.R.

1. The above named applicant has filed application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the question put up before this Court for determination under the aforesaid provision of law is as under: "Whether in the facts and circumstances of the case the above mentioned item i.e. Load Cells shall fall in Entry No.185 of Third Schedule to the DVAT Act, 2004 and the same will be taxable @ 4% in view of Section 4(1)(b) of the DVAT Act, 2004 or it shall be taxable 12.5%."
2. The applications for determination have been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- has been paid through Demand Draft No.008731 dated 26.11.2008.
3. The facts as stated in the application are that the applicant is a Private Limited Company registered vide TIN 07380304164 for manufacturing and re-sale of Load Cells, Digital Indicator etc. Load Cell is a transducer, which converts force into measurable electrical output. Amongst various kinds of Load Cells, strain gauge based Load Cells are the most commonly used type.

4. The applicant has sought determination under Section 84 of the DVAT Act, 2004 regarding 'Load Cells'. It is the case of the applicant that the Load Cells are part of weighing machines and thus covered by Entry No.185 of the Third Schedule to the DVAT Act, 2004, which reads as "Weights and Measures". This Entry was inserted by amendment in the Act effective from 1.4.2008.
5. Although "Weights and Measures" are not defined under the DVAT Act, 2004. The definition of "Weights and Measures" as per the Standards of Weights and Measures Act, 1976 is as follows: "Weight or measure" means a weight or measure specified by or under this Act, and includes a weighing or measuring instrument. Weighing or measuring instrument is again defined in the Standards of Weights and Measures Act, 1976 as under: "weighing or measuring instrument" means any object, instrument, apparatus or device, or any combination thereof, which is, or is intended to be used, exclusively or additionally, for the purpose of making any weightment or measurement, and includes any appliance, accessory or part associated with any such object, instrument, apparatus or device."
6. Shri A.K.Batra, Chartered Accountant appeared for the applicant and Shri Nitya Nand as Departmental Representative.
7. *The applicant has claimed that these Load Cells are devices for measuring the weight and volumes of the products on weighing scales through sensing technology and are very commonly used in modern world. He also claimed that Load Cells are major part of any weighing machine.*
8. There does not appear to be any evidence to the contrary.
9. The D.R. has submitted that Entry No.185 mentions "Weights and Measures" and it should include only the measuring instruments and not any of its components and parts. The D.R. further submitted that under the Central Excise Tariff Heading No.8423 concerning weighing machineries, Load Cells have not been separately mentioned.
10. I have heard both the parties at length and perused the material available on record. It is clear from the features of the product "Load Cells" as spelt out in the manufacturers literature that "Load Cells" are essential components of the weighing or measuring instruments.
11. The phrase "Weights and Measures" has not been defined under the DVAT Act, 2004. However, the term "Weight or Measure" has been defined under the Standards of Weights and Measures Act, 1976. Under

the accepted canons of statutory construction it is permissible to read the definition of phrases defined in another Act if such phrase is not specifically defined in the Act with which we are being concerned. However, "Weights and Measures" being taxed under the DVAT Act, 2004 is regulated by the said Standards of Weights and Measures Act, 1976 and I would not hesitate in holding that the definition of "Weights and Measures" as appearing in the Standards of Weights and Measures Act, 1976 ought to be utilized for the construction of Entry No.185 of the Third Schedule to the DVAT Act, 2004.

12. The definition of "Weighing or Measuring Instruments" under Section 2(zc) read with definition of "Weight or Measure" under Section 2(zd) would indicate that a component or part of the complete measuring device is also included as "Weight or Measure" under the said Act.
13. Entry No.185 of the Third Schedule to the DVAT Act, 2004 does not contain any riders, classification or conditions. I have therefore no hesitation in accepting the contention of the learned Counsel for the applicant that "Load Cells" which is a major part of the weighing machine is also "Weight or Measure" for the purpose of Entry No.185 of the Third Schedule to the DVAT Act, 2004.
14. **In view of the above I decide the question in favour of the applicant and hold that the Load Cells are nothing but weights in common parlance and hence are part of Entry No.185 to the Third Schedule to the DVAT Act, 2004 and taxable at the rate of 4%. However, this determination shall be applicable from the date mentioned herein above and will not affect old transactions prior to this date and the authorities under the DVAT Act, 2004 will not refund any amount if so collected from the applicant.** (Archna Arora) Commissioner (T&T) Copy for information and necessary action to:

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
4. The Value Added Tax Officer, Policy Branch. Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
5. Guard File. (Archna Arora) Commissioner (T&T)

Number : 229/CDVAT/2008
Issue Date : 23-03-2009
Subject : M/s. Treads Direct

Limited

IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI

Vs.

M/s.Treadsdirect Limited, Sanjay Gandhi Transport Nagar, Delhi – 110 042.

No.229/CDVAT/2008/ AW-104, Dated: 23-03-2009

ORDER

Present for the Applicant: Shri Gian Arora, Advocate
Present for the Department : Shri Nitya Nand, D.R.

1. The abovenamed applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the question put up before this Court for determination under the aforesaid provision of law is as under: **"Tread Rubber, Retreading material Taxable @ 12.5% or 4%?"**
2. The application for determination has been made in the prescribed format i.e. DVAT-42 and the requisite fee of Rs.500/- has been paid through Challan dated 19.11.2008.

3. The facts as stated in the application are that the applicant company is selling Tread Rubber and other retreading material to the wholeseller/franchisee against Tax Invoice and charging VAT @ 12.5% in Delhi. It is stated by the applicant that some dealers to whom sales are being made have raised the objection that the Tread Rubber and other retreading material is taxable @ 4% and not 12.5% being Industrial Input in Third Schedule to the DVAT Act, 2004. It is further stated that the applicant has made investigation from other States and has found that the State of Uttar Pradesh, Gujarat, Rajasthan, West Bengal have determined Tread Rubber and other Retreading material as Industrial Input taxable @ 4%. The applicant has filed copies of determination orders/notifications of the said States and has approached by way of the present application seeking determination of the rate of tax on the said item.
4. Shri Gian Arora, Advocate appeared for the applicant and Shri Nitya Nand as Departmental Representative.
5. The State of Gujarat vide notification dated 19th July, 2006 has added "Tread Rubber" in Schedule II of the Gujarat Value Added Tax Act, 2003. *The Commissioner of Taxes, Assam vide its order dated 3rd July, 2008 while considering the rate of tax on items "cushion compound and cushion gum which are used for retreading of tyres held as under : "The items cushion compound and cushion gum are specified under sub-heading No.40029920 of main heading No.40.02 and rubber solution is specified under sub-heading No.400520 of main heading No.40.05 of the Central Excise and Tariff Act, 1985. Therefore, these items should be taxable @ 4% as per entry at Sl.No.157 and 159 respectively in Part-C of the Second Schedule of the AVAT Act, 2003. Again, these items are used for purpose of retreading of tyres. The rate of tax on these items is 4% if these items are used for retreading of tyres already owned by the purchaser. However, if the dealer sells retreated tyres using these items, then the rate of retreated tyres will be that is applicable to tyres i.e. 12.5%."*
6. The Government of Rajasthan vide its notification dated 8.5.2006 have added Entry No.246 to the Schedule-IV of the Rajasthan Value Added Tax Act, 2003, which reads thus: "Tread Rubber, Bonding gum and Naked vulcanizing cement."
7. The Commissioner, Commercial Taxes, Uttar Pradesh vide its order dated 10.6.2008, while deciding the rate of tax on procured tread rubber held the said item to be taxable at the rate of 4%.

8. The Commissioner, Commercial Taxes, Madhya Pradesh vide its order dated 30.6.2007, while deciding the rate of tax on item 'tread rubber' held the same to be taxable at the rate of 4%.
9. In the above facts and circumstances, the applicant has contended that rate of tax on tread rubber and retreading material should be at the rate of 4% in the NCT of Delhi also.
10. The D.R. pointed out that vide notification No.F.101 (328)/2005-Fin.(A/Cs)/255 dated 20th April, 2005 Entry No.84 representing Industrial Inputs was inserted, wherein Sr.No.142 referred to Synthetic rubber and factice derived from oils. The sub-heading (12) of the said Entry mentioned "tread rubber compound, cushion compound, cushion gum and tread gum for resoling or repairing or retreading rubber tyre. The said Entry was based on Central Excise Tariff Heading No.4002.99.20. The HSN classification under the said notification extended upto 8 digits. However, in order to make it more generic, vide Notification No.F.101(328)/20050-Fin.(A/Cs)(ii)/548 dated 11th May, 2005, HSN classification upto 4 digits was adopted. The said Entry relating to HSN classification No.4002 now appears at Sr.No.170 of Entry No.84 of the Third Schedule to the DVAT Act, 2004 and the same items shall also be covered by the said Entry, without making any difference. He pointed out that tread rubber and retreading material would get covered by HSN classification No.4002 at Sr.No.170 of Entry No.84 of the Third Schedule to the DVAT Act, 2004.
11. I have heard both the parties and examined the documents on record. In my view the item "**Tread rubber and retreading material**" **is covered by HSN classification No.4002 at Sr.No.170 of Entry No.84 of the Third Schedule to the DVAT Act, 2004 as an Industrial Input and would be taxable at the rate of 4%.** Held accordingly. (Archna Arora) Commissioner (T&T) Copy for information and necessary action to:
 1. The Applicant.
 2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
 3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
 4. The Value Added Tax Officer, Policy Branch, Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
 5. Guard File. (Archna Arora) Commissioner (T&T)

Number : 230-231/CDVAT/2008
Issue Date : 23-03-2009
Subject : M/s. Nethouse Industries

**IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI**

Vs.

**M/s. Nethouse Industries, 46, LIG Flats, Pocket-B, Hastal, Uttam Nagar, New Delhi
- 110 059.**

No: 230-231/CDVAT/2008/ Dated: 23-03-2009

ORDER

Present for the Applicant: Shri Amit Sood, Advocate

Present for the Department : Shri Nitya Nand, D.R.

1. The above named applicant has filed two applications u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the questions put up before this Court for determination under the aforesaid provision of law are as under:
 - (i) "Whether the rope manufactured out of Poly Propelene, a man made fabric being used as agriculture implements and accessories as classifiable under Entry 1 or Entry No.51 of the First Schedule to DVAT Act and as such exempt from the Tax under sub-section (1) of Section 6 of the DVAT Act?"
 - (ii) "Whether the rope manufactured out of Poly Propelene, a man made fabric are taxable @ 4% under Clause (b) of sub-section (1) of Section 4 of the DVAT Act as an industrial input being used as packing material, or for the purpose of material handling or for the purpose of household as classifiable in sub entry 168, 165 166 of Entry No.84, or Entry No.156 or Entry No.165 respectively of Third Schedule to the DVAT Act?"
2. The applications for determination have been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- each paid through Demand Draft No.426627 dated 26.8.2008 and 426626 dated 26.8.2008 respectively.
3. The two applications filed by the applicant seeking determination involves similar item, hence both the applications are being dealt by a common order.
4. The facts as stated in the application are that the applicant is presently engaged in the business of trading of all types of nets including safety nets, agricultural nets, sports net, fisheries net etc. and is registered vide TIN 07850306282. It is stated that the applicant is contemplating to diversify into trading of Poly Propelene Ropes.
5. Through first application, the use factor of the rope has been stated to be in the field of agriculture sector as agricultural implement, component and accessories is stated to be for tying of animals, packing of agricultural produce, drawing water out of tube wells, holding of submersible pumps for irrigation etc.
6. Through second application the use factor of the rope has been stated to be industrial use, household use and defence use. For industrial use, the main areas amongst others are packing, material handling and transportation. For household use, the main areas are stated to be cot

drawing water out of wells in the rural areas, playing article for children like skipping, tying swings for children and for tying submersible pumps to draw ground water. For defence use, the main areas are material handling, transportation and putting up of tents etc.

7. The Poly Propelene rope, in respect of which the dealer has approached this Court for determination of rate of tax, is stated to be man made fiber i.e. Poly Propelene. It is stated that the basic material of any rope irrespective of its source material is yarn and source material may be natural yarn i.e. made of cotton, sabai grass, jute etc. or man made i.e. made of Poly Propelene. When the yarn is twisted in its initial stages it gets converted into thread and in case it is further twisted along with other twisted threads it becomes rope. It is stated that traditionally ropes were made of natural fiber, however, with the development and scientific advancement, man made fiber almost substituted the natural fiber and Poly Propelene almost wiped out the use of jute, sabai grass, cloth, cotton etc. as source material for rope and almost all sectors started preferring use of rope and other material like Newar etc. In modern times, Poly Propelene is a preferred choice of the source material for Ropes because of its properties e.g. better elasticity, high tenstile strength, high durability and cost effectiveness.
8. The applicant has contended that the item under consideration can be placed in any of the three different headings of the Third Schedule to the DVAT Act, 2004. The first heading is Entry No.84 of the Third Schedule being Industrial Inputs under sub-clause 168 and/or 165. The second heading is Entry No.156 of the Third Schedule which covers item "Sabai grass and rope". The third heading is Entry No.165 of the Third Schedule to the DVAT Act, 2004 which covers "household plastic items such as combs, jugs, soap case mug, tooth brush, patra looking glass and photo frames chakla, belan cutlery tea and atta chhanani lunch box bottles trays tokras including basket mats basins tubs and drums of capacity upto 100 liters.
9. The applicant has further contended that under the HSN classification, there is no differentiation of the ropes based on the source material from which it is made and all types of ropes are classified under the same chapter and subjected to the same duty and as such Poly Propelene rope should be included in the word "Rope" as used in Entry No.156 of the Third Schedule to the DVAT Act, 2004. It is further contended that in common parlance the word "Rope" is understood to be an article which is primarily used for the purpose of tying and material handling and has a general household usage and as such the same should be classifiable

under the word "Rope" in Entry No.156 to the Third Schedule to the DVAT Act, 2004.

10. In support of his contention, the applicant has relied on the following judgments:

- i) Delhi Cloth & General Mills Co. Ltd. Vs. State of Rajasthan and Ors. – [1980] 46 STC 256 (SC).
- ii) Commissioner of Sales Tax Vs. Jaswant Singh Charan Singh – [1967] 19 STC 469 (SC).
- iii) Indo International Industries Vs. Commissioner of Sales Tax, U.P. [1981] 47 STC 359 (SC).
- iv) Royal Hatcheries Pvt. Ltd. Vs. State of Andhra Pradesh [1994] 92 STC 239 (SC).
- v) Indian Cable Co. Ltd. Vs. Collector of Central Excise Calcutta and Ors. – [1995] 97 STC 307 (SC).
- vi) State of Maharashtra Vs. Bradma of India Ltd. – [2005] 140 STC 17 (SC).
- vii) Saurashtra Chemicals Vs. Commissioner of Sales Tax, U.P. [2006] 143 STC 368 (SC).
- viii) Mahim Patram Pvt. Ltd. Vs. Union of India & Ors. [2007] 6 VAT & STC 248 (SC).
- ix) Trutuf Safety Glass Industries Vs. Commissioner of Sales Tax, U.P. [2007] 8 VAT & STC 661 (SC).
- x) State of Punjab & Ors. Vs. Amritsar Beverages Ltd. & Ors. [2006] 147 STC 657 SC.

11. Shri Amit Sood, Advocate appeared on behalf of the applicant and argued on the above points. The applicant has also shown the actual product alongwith its various uses i.e. agricultural, industrial and household use.

12. I have heard both the parties, examined the product and the literature on the product under consideration.

13. On the basis of arguments put forth by the applicant, the issue for consideration is whether the item "Poly Propelene Rope" would fall under First Schedule to the DVAT Act, 2004 or under Third Schedule to the DVAT Act, 2004 or the same is an unspecified item taxable at the rate of 12.5%.

14. Entry No.51 deals with "Rassi, Ban and Newars" and by no stretch of imagination can the present product be included in this Entry and therefore in my view the contention of the applicant in his application dated 23.11.2008 that the product can be included in Entry No.51 of First

Schedule and hence exempted from VAT is ruled out. Accordingly, the first application requesting for determination of the product under Entry No.51 of the First Schedule to the DVAT Act, 2004 is dismissed.

15. Now considering the second application where the applicant has sought determination of the product under various Entries of the Third Schedule to the DVAT Act, 2004, I find that the word rope is defined in English as stout cord made by twisting together strands of hemp, sisal, flax, cotton, nylon, wire or similar material. Further under the Central Excise Tariff Heading No.5607, amongst other kinds of ropes, polypropylene also finds mention.
16. I have also examined various judgments cited by the Counsel regarding common parlance.
17. The counsel for the applicant arguing Entry No.156 of the DVAT Act, 2004 has vehemently stated that based on various rulings of the Hon'ble Supreme Court quoted by him, there is no doubt that the item under consideration falls in Entry No.156 and hence it be taxable at the rate of 4%.
18. On the other hand the D.R. stated that the word rope mentioned in Entry No.156 of the DVAT Act, 2004 should be rope made from Sabai grass and the word Poly propylene cannot be inferred from this Entry.
19. I have heard both the parties and also understood the product and its literature. In my view the product Poly Propylene rope is covered by Entry No.156 as the Legislature has just written the word 'Rope' and not qualified the same. It is further seen that Entry No.156 uses the words "Sabai grass and Rope". The use of word 'and', in my view, is crucial. If it were intended that the word 'rope' in Entry No.156 should be only rope made of sabai grass, the Entry would have read "Sabai grass rope". I am of the view that the word 'and' would distinguish the phrase 'sabai grass' from the word rope and that the said phrase and word have been used disjunctively and not conjunctively. **Accordingly, the item 'Poly Propylene Rope' will get covered under Entry No.156 of the DVAT Act, 2004 and taxable at the rate of 4%. Held accordingly.** (Archna Arora) Commissioner (T&T) Copy for information and necessary action to:

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes,
Vyapar Bhavan, I.P.Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade
& Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.

4. The Value Added Tax Officer, Policy Branch. Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
5. Guard File. (Archna Arora) Commissioner (T&T)

Number : No.235/DVAT/2009
Issue Date : 03-03-2009
Subject : M/s. Nagpal Brothers

(Regd)

**IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI**

Vs.

**M/s.Nagpal Brothers (Regd), C-127, Phase-II (Behind Gulab House), Mayapuri
Industrial Area, New Delhi – 110 064**

No.235/DVAT/2009/ Dated: 03-03-2009

ORDER

Present for the Applicant: Shri K.K.Gupta, C.A.
Present for the Department : Shri Nitya Nand, D.R.

1. The abovenamed applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the questions put up before this Court for determination under the aforesaid provision of law is as under: "Whether Bakery machines would fall under Clause (ii) of Entry No.86 of Third Schedule to the DVAT Act, 2004".
2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through Demand Draft No.248576 dated 7.1.2009.

3. The application was taken up on 18.2.2009 when Shri K.K.Gupta, C.A. appeared for applicant and Shri Nitya Nand as Departmental Representative.
4. The applicant has filed the above application seeking determination on the question raised above. In Column No.5 of the application in Form DVAT 42, the applicant has indicated in affirmative that Audit has been commenced against the applicant dealer. In such an event provisions of sub-Section (3) of Section 84 of the DVAT Act, 2004 would get attracted which debars for making such an application for determination of a determinable question. Relevant extracts of sub-section (3) of Section 84 of the DVAT Act, 2004 are reproduced hereunder: “ (3) An application for the determination of a determinable question may not be made after – (a) the Commissioner has commenced the audit of the person pursuant to section 58 of this Act; or (b) the Commissioner has issued an assessment for the tax period in which the transaction that is the subject of the determinable question occurred. Explanation: - For the purpose of this sub-section, the Commissioner shall be deemed to have commenced the audit of a person under section 58 of this Act when the Commissioner serves a notice to this effect.”
5. For the above reasons, the application filed by the dealer is not maintainable in view of the provisions of sub-section (3) of Section 84 of the DVAT Act, 2004 and hence rejected. (Archna Arora) Commissioner (T&T) Copy for information and necessary action to:
 1. The Applicant.
 2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
 3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
 4. The Value Added Tax Officer, Policy Branch, Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
 5. Guard File. (Archna Arora) Commissioner (T&T)

Industries

Number : 239/CDVAT/2009
Issue Date : 03-03-2009
Subject : M/s. Asim

**IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI**

Vs.

M/s.Asim Industries, D-1/65, Janak Puri, New Delhi – 110 058.

No.239/CDVAT/2009/Dated: 03-03-2009

ORDER

Present for the Applicant: Shri I.P.Katyal, Director
Present for the Department : Shri Nitya Nand, D.R.

1. The above named applicant has filed two applications u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the questions put up before this Court for determination under the aforesaid provision of law is as under: "Rate of VAT on handheld GPS Receivers"

2. The applications for determination have been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through Demand Draft No.309648 dated 5.2.2009.
3. The facts as per the application are that the applicant is a registered dealer vide TIN 07030205562. Through this application the applicant has approached for determination of rate of VAT on the handheld GPS Receivers. It is stated that the GPS Receiver is akin to the Radio Communication Receiver, which is already listed in the Third Schedule to the DVAT Act, 2004 and as such VAT on GPS Receivers should also be the same. As per the literature on the subject item filed by the applicant, **the Global Positioning System (GPS) is a technical marvel made possible by a group of satellites in earth orbit that transmit precise signals, allowing GPS receivers to calculate and display location, speed, and time information to the user.**
4. **It is claimed in the application that the said item would fall in Entry No.41A(16) of the Third Schedule to the DVAT Act, 2004.**
5. Shri Indra Prakash Katyal, Director of the company appeared for the applicant and Shri Nitya Nand as Departmental Representative.
6. **It was contended on behalf of the applicant that the item GPS Receiver is an I.T. Product and would be covered under Entry No.41A (16) to the DVAT Act, 2004.** A copy of Bill of Entry pertaining to G.P.S. was also filed by the applicant wherein the Central Excise Tariff Heading in respect of the said item has been indicated as 8526 9190.
7. The D.R. pointed out that the item G.P.S. Receivers does not find any reference in the Third Schedule to the DVAT Act, 2004 and is not an I.T. Product. He further pointed out that Central Excise Tariff Heading 8526 is not mentioned in the Entry No.41A to the Third Schedule to the DVAT Act, 2004 and therefore the said item would not be covered by the said Entry No.41A to the DVAT Act, 2004 and as such it is an unspecified item taxable at the rate of 12.5%.
8. I have heard both the parties and gone through the material placed on record. I have also gone through the Entry No.41A of the Third Schedule to the DVAT Act, 2004 as also the relevant Headings of the Central Excise Tariff. I am of the view that since relevant Heading 8526 of the Central Excise Tariff does not find any mention in Entry No.41A of the Third Schedule to the DVAT Act, 2004, the product under reference would not be covered by the said Entry No.41A of the Third Schedule to the DVAT Act, 2004 and is therefore an unspecified item taxable at the rate of

12.5%. Held accordingly. (Archna Arora) Commissioner (T&T) Copy for information and necessary action to:

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
4. The Value Added Tax Officer, Policy Branch. Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
5. Guard File. (Archna Arora) Commissioner (T&T)

234/CDVAT/2008

Number : No:
Issue Date : 04-02-2009
Subject : M/s. S. K. Polymers

**IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI**

Vs.

M/s.S.K.Polymers, E-146, First Floor, Pandav Nagar, Patparganj, Delhi – 110 091.

No: 234/CDVAT/2008/ Dated: 04-02-09

ORDER

Present for the Applicant : Shri Ankit Gupta, Prop.
Present for the Department : Shri Nitya Nand, D.R.

1. The above named applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the questions put up before this Court for determination under the aforesaid provision of law is as under: "Tax liability for Plastic Waste Powder"
2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through Challan No. 0002 dated 17-11-2008.
3. The arguments in the case were heard on 7.1.2009 when Shri Ankit Gupta, Proprietor and Shri Nitya Nand, D.R. attended the proceedings.
4. The facts as stated in the application are that the applicant is a registered dealer having TIN 07590328153. It is stated that the plastic bags which are generally thrown are being collected by rack pickers and after cleaning with air pressure the same waste plastic is converted into waste dana/powder. This waste plastic dana is ultimately of no use. The applicant has sought determination on the tax liability on plastic waste powder.
5. Shri Ankit Gupta, Prop. of the Firm stated that as per Entry No.60 of First Scheduled to the DVAT Act, 2004 plastic waste is exempt from VAT. He explained that plastic waste powder is made from the plastic bags by cleaning them with air pressure and crushing them in small pieces. No material is added in making plastic waste powder. He also produced sample of the plastic waste powder. It is also stated in the application that this plastic waste powder is ultimately of no use. In advance countries the same is only used in road construction. This research has also been made in India through Central Road Research Institute and the same plastic waste can also be used in road construction.
6. The D.R. stated that as per Entry No.60 of First Scheduled to the DVAT Act, 2004 plastic waste is exempt from VAT. The sample shown by the applicant was also of plastic waste which are small crushed pieces of plastic bags with no material added thereto. Therefore, the same can be covered under Entry No.60 of the First Schedule to the DVAT Act, 2004 and as such exempt from VAT. The D.R. further stated that however as per Entry No.83 of the Third Schedule to the DVAT Act, 2004 plastic granules, plastic powder and master batches are taxable at the rate of 4%.

7. I have perused the application for determination under Section 84 of the DVAT Act, 2004, the documents placed on record by the applicant, the sample of plastic waste and heard both the parties. **Since the crushed small pieces of plastic bags are plastic waste the same will be covered under Entry No.60 of First Scheduled to the DVAT Act, 2004 and thus exempt from VAT.** Held accordingly. (Archna Arora) Commissioner (T&T)
Copy for information and necessary action to:

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi. \
4. The Value Added Tax Officer, Policy Branch. Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
5. Guard File. (Archna Arora) Commissioner (T&T)

Number : No: 223/CDVAT/2008
Issue Date : 04-02-2009
Subject : M/s. Mangla Industries

**IN THE COURT OF COMMISSIONER DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAVAN, NEW DELHI**

Vs.

M/s. Mangla Industries, 1375-B/93, Tri Nagar, Delhi – 110 035.

No: 223/CDVAT/2008/ Dated: 04-02-09

ORDER

**Present for the Applicant : Shri Ram Avtar Mangla Prop.
Present for the Department : Shri Nitya Nand, D.R.**

1. The above named applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the questions put up before this Court for determination under the aforesaid provision of law is as under: "Whether the item 'Hangers' denotes for all types of Garment Hangers as mentioned in S.No.166 of Third Schedule to the DVAT Act, 2004 and taxable @ 4%."
2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through Demand Draft No. 137788 dated 8-9-2008.
3. The arguments in the case were heard on 14.1.2009 when Shri Ram Avtar Mangla Prop. and Shri Nitya Nand, D.R. attended the proceedings.
4. The facts as stated in the application are that the applicant is a registered dealer having TIN 07260067356. The applicant has sought clarification whether the item 'Hangers' denotes for all types of garment hangers.
5. Shri Ram Avtar Mangla, Prop. Appeared and contended that in the entry at Sr.No.166 of Third Schedule to the DVAT Act, 2004, the item hanger finds place amongst other items. Entry 166 mainly refers to the items 'Fittings for doors, windows and furniture including He stated that a perusal of all the items mentioned in the said Entry shows that all the items mentioned therein do not form part of fittings for doors and windows. There are some generalized items namely bullock & horse shoes, cotter pins, pulleys, wire brushes & metal section, which have no connection with fittings for doors and windows. In that event entry 'Hangers' appearing at Sr.No.166 of the Third Schedule to the DVAT Act, 2004 would be wide enough to cover all types of garment hangers.

6. The D.R. based his arguments on the information provided on 'google image search' under the heading hangers + hardware, wherein all types of hangers are included in the said list.
7. *The applicant also produced images of various types of hangers downloaded from the same website, which also includes garment hangers. He also stated that in common parlance, hangers denotes garment hangers. 8. I have perused the application for determination under Section 84 of the DVAT Act, 2004; the documents placed on record and heard both the parties. In my view, item 'hangers' appearing in the entry at Sr.No.166 of the Third Schedule to the DVAT Act, 2004 covers all types of hangers including 'garment hangers'. Held accordingly. (Archna Arora) Commissioner (T&T) Copy for information and necessary action to:*

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
4. The Value Added Tax Officer, Policy Branch, Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
5. Guard File. (Archna Arora) Commissioner (T&T)