

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, KERALA
THIRUVANANTHAPURAM

PRESENT: P. MARA PANDIYAN IAS

Sub: KVAT Act, 2003- Clarification U/s 94 – Rate of tax of PVC Profile Panels /Sheets –
Orders Issued –Reg.

Ref: Application from M/s Potentech (Guangdong) Ltd. China dated 8/4/2009.

ORDER No.C3/17022/09/CT DATED 24/3/2010.

1. M/s. Potentech (Guangdong) Ltd. China has preferred an application U/s 94 of the Kerala Value Added Tax Act,2003 seeking clarification on the rate of tax of the commodity PVC Profile Panels /Sheets.

2. The applicant is a manufacturer of PVC Profile Panels / Sheets having its factory in China. The goods are imported from China and is marketed under the name 'MULTI WOOD'. The applicant contends that the commodity contains 70% PVC and 30% additives like UV Stabilizers, lubricants etc. The thickness varies from .5mm to 30mm. The applicant has detailed the manufacturing process of the commodity as under:

The main ingredients are PVC, Calcium Carbonate, Titanium Di-oxide, Methacrylic Acid Styrene Copolymer, Paraffin Waxes and Hydrocarbon waxes. The said materials are mixed in mechanical agitator set. The mixed compound is fed into the dual screws extruder, heated and plasticized to melt continuously. The hot melt goes through an extrusion die and is hauled in cool calibrating plates to shape the sheet continuously. After hot soft melt leaves the extrusion die it is hauled in the cool calibrating plates close to the die immediately to form the rigid surface'.

3. The applicant contends that the commodity is imported and cleared under the Tariff Entry 3920 and that it is covered by the Entry No.60 of the List A of Third Schedule to the Kerala Value Added Tax Act, 2003. The applicant contends that the said entry covers both flexible as well as rigid ones and that even though the Kerala Value Added Tax Act entry is different, applying the rules of interpretation, the meaning ascribed under the Customs Tariff Act is to be adopted and the commodity would fall under Entry 60 of the List A, Third Schedule to the Act.

4. The applicant has also argued that without prejudice to the above claim the commodity is classifiable under either of the Entry 118(16) with HSN 3916 or 118(17) with HSN 3921 of the List A of the Third Schedule to the Act or Entry 99 (1) (iii) of the Third Schedule. The applicant further argues that for resolving any dispute relating to Tariff classification the HSN Code is a safe guide for ascertaining the true meaning of the expression. The applicant has relied on the decisions in of the Hon'ble Supreme Court of India in CCE, Shillong Vs Wood Craft Products Limited (77 ELT 23)(SC) and in CCE, Vs Bakelite Hylam Limited (91 ELT 13) (SC).

5. The applicant has referred the scope of Tariff Entry 3916 given in the Explanatory notes to the HSN and contends that the Department of Polymer Science and Rubber Technology of CUSAT has certified that 'the given product is poly (vinyl chloride) monofilaments having cross sectional dimensions exceeding 1mm manufactured by extrusion process' and contends that the commodity falls under Tariff Entry 3916. The applicant has also informed that the Hon'ble CEGAT, West Zonal Bench, Mumbai in Cariphans India Ltd Vs CCE, Aurangabad (2002) 145 ELT 664 has explained the scope of the Tariff Entry 3916 and the same was upheld by the Hon'ble Supreme Court in CCE, Aurangabad Vs Cariphans India Ltd (2008) 226 ELT18

(SC). The applicant has also argued that the said decision hold that “profiles which are of solid cross section would be classifiable under either Heading 3920 or 3921. Those which do not will be classifiable under 39.16”.

6. The applicant has requested to clarify the rate of tax of the commodity.

7. The authorised representative of the applicant was heard and the contentions raised were examined.

8. As no unanimous decision could be arrived at by the Authority for Clarification, the matter has been referred to the Commissioner of Commercial Taxes as envisaged under sub-section (6) of Section 94 of the Kerala Value Added Tax Act, 2003.

9. The question to be decided is whether the impugned commodity would fall under Entry 60 of List A of Third Schedule to the Act carrying HSN 3920 or under Entry 118(16) or (17) of List A of Third Schedule to the Act carrying HSN 3916 and 3921 respectively or under Entry 99 (1)(iii) of the Third Schedule as contended by the applicant.

10. With respect to the Entry 60 of List A of Third Schedule to the Act carrying HSN 3920, it has already been examined and clarified vide Order No.C3-11930/08/CT dated 9/12/2008 that Rigid plates, plain films, sheets and strips of the kind which are included in the HSN 3920 is specifically excluded from Entry 60 of the of List A of Third Schedule to the Act and hence the commodity PVC Profile Sheets was clarified as taxable at 12.5% vide Entry 103 of SRO No.82/2006.

11. With regard to the contention of the applicant regarding Entries 118(16) carrying HSN 3916 and 118(17) carrying HSN 3921, the matter is examined as follows:

a. The applicant has referred the judgment of Hon'ble Supreme Court in CCE, Aurangabad VS. Cariphans India (2008)(226) ELT 18 SC. The product under dispute in the referred judgment had two top and bottom layers and vertical flutes joining the top and bottom levels at regular intervals and space generated between the top and bottom layers and the vertical flutes remain hollow. In that case respondent claimed classification of the product under sub heading 3926.90, the department alleged it to be classifiable under 3920.29 as a sheet of plastic but the Tribunal found that the product would be classifiable under 3916 of the Central Excise Tariff. What the Tribunal considered is whether the product of the applicant was sheets of plastics would include two sheets joint together by a series of vertical ribs and those containing considerable hollow space. The Tribunal found that for something to be a sheet, it must have solid cross section. Thus the Tribunal found that those profiles which have solid cross section would be classifiable under either heading 3920 or 3921. Those which do not will be classifiable under 3916. In the said judgment the Supreme Court had upheld the findings of the Tribunal. With respect to Entry 118(16) of the Third Schedule to the Act, from the manufacturing process detailed by the applicant in Para 2 above, it can be seen that the product of the applicant is a continuous sheet which can be cut to suit the needs and is not a profile shape or a monofilament. A “monofilament of plastic” is a single strand of filament like articles of the like used in weaving plastic sacks, making bristles, fishing lines etc. A profile as commonly understood, is formed with a specific shape or cross section and certain standards of chemical composition and strength. The size, shape, strength of such profiles is standardized during production process itself (like PVC door sections, steel rails etc.). From the contentions raised by the applicant, the

product can be gathered to be a sheet, which can be cut to various sizes according to the needs. Being so, the Certificate issued by the Department of Polymer Science and Rubber Technology, CUSAT, cannot be taken into consideration, for deciding the issue at hand. Hence the product will not fall under the HSN code 3916 and consequently under entry 118(16) of the Third Schedule.

b. With respect to the Entry 118(17) of the Third Schedule carrying HSN Code 3921, the Entry include only “other plates, sheets, film, foil and strip, of plastics which are cellular, or lacquered or metallised or laminated”. The applicant has not put forward any argument or evidence to substantiate such a case.

As such, it can be seen that the Judgment relied upon by the applicant or the Certificate produced, has no bearing to the issue at hand and it does not rebut the earlier Clarification Order No.C3/11930/08/CT dated 9/12/08. Hence this item would not fall under the said Entries.

12. With respect to the Entry No 99 (1) (iii) of Third Schedule, the Entry does not carry any HSN Code. It reads “PVC profiles (channels) with or without hole”. The Clarification Order No.C3-15696/07 dated 07/05/2009 was issued, interpreting this entry, whereby PVC panels, sections and frames, door panels and ceiling panels etc. without any fabrication, i.e., in the raw profile form was clarified as taxable at 4%. But PVC profile sheets seems altogether a different commodity.

13. On verification of the sample of the commodity in question it is found that the commodity can be used for making partitions in buildings and also for making false ceilings. It is also used as a substitute for wooden frames. It is admitted that the applicant reports that the commodity is imported and cleared under Tariff Entry 3920. With respect to the contention relating to the rules of interpretation of the Schedules, it has already been clarified vide Order No.C3-11930/08/CT dated 9/12/2008 that Rigid plates, plain films, sheets and strips of the kind which are included in the HSN 3920 is specifically excluded from Entry 60 of the List A of Third Schedule to the Act. Thus it can be safely concluded that Rigid PVC Profile Panel / Sheets, the commodity dealt by the applicant, is taxable at 12.5% vide Entry 103 of SRO No. 82/2006.

The issues raised above are clarified accordingly.

COMMISSIONER

To,

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