

**IN THE OFFICE OF THE COMMISSIONER
DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF NCT OF DELHI
VYAPAR BHAVAN, I.P.ESTATE, NEW DELHI**

No.F. 71/CDVAT/2015/373

Dated :

O R D E R

Name of the Firm : M/s Manufacturers Traders Association

Present for the applicant : Sh. Rakesh Garg, FCA

**Present for the Department : Sh.M.K.Aggarwal
Department Representative**

The application has been filed, by the aforesaid applicant under section 74B of the Delhi Value Added Tax Act 2004 (hereinafter referred to as the “said act”), in the prescribed form 38C, for review of the determination order, dated 30.09.2014, passed in the case of M/s STP limited.

1. M/s STP Limited had earlier filed an application on 30.05.2014 before this court to determine the following question:-

“Whether SBR Latex falls within the ambit of entry No. 84(170) of the Schedule-III of the DVAT Act, 2004 and is chargeable to VAT @ 5%”

2. The application had been disposed off vide order No.366/CDVAT/2014/298 dated 30.09.2014 with the observation that entry No. 84(170) of the Third Schedule appended to DVAT Act,2004, is restricted to the extent of synthetic rubber derived from oils i.e. the entry is based on the manufacturing aspect of the

product. The product under consideration is water based and not oil based as reflected from the details of the constituents submitted by the applicant, hence, it cannot be taken as covered under the scope of entry 84(170) of the third schedule of the DVAT ACT, 2004. Thus chargeable under section 4(1)(e) of DVAT Act, @ 12.5%.

3. The applicant has filed for review and submitted that certain facts and provisions of law have escaped the kind attention of the Court while framing the order dated 30-09-2014.
4. Sh. Rakesh Garg, Counsel of the applicant, appeared and reiterated the facts and grounds of the case and requested to review the determination orders dated 30.09.2014 under the provisions of section 74B of the DVAT Act. The counsel made the following submissions :-

- a. The applicant M/s Manufacturers Traders Association, 33-Gujrat Vihar, Vikas Marg, Delhi-110 092 is an association whose some of the members are registered dealers with the Delhi Trade and Taxes Department, and are engaged, in manufacturing and trading of various commodities falling under various schedules of the DVAT Act including SBR Latex.
- b. That, "SBR latex" is an industrial input, which has number of applications in the industry and should be classified under entry 84 of the third schedule of the DVAT Act 2004.
- c. That, with reference to entry no 84 of schedule 3, containing industrial inputs, notes were inserted below entry no 41A of schedule III of the Delhi VAT Act w.e.f 14.03.2006. The notes, applicable to entry 84 also, read as under:-

Note.-(1) The rules for the interpretation of the provisions of the central Excise Tariff Act 1985 read with explanatory notes as updated from time to time published by the Customs Co-operation Council, Brussels apply for the interpretation of this entry and the entry number 84 of this schedule.

Note.-(2) Where any commodities are described against any heading or as the case may be, sub-heading and the description in this entry and in entry number 84 is different in any manner from the corresponding description in the Central Excise Tariff Act 1985, then, only those commodities described in this entry and in the entry number 84 will be covered by the scope of this notification and other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.

Note.-(3) Subject to Note-2, for the purpose of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff then all the commodities covered for the purpose of the said tariff under the heading or sub-heading will be covered by the scope of this notification.

Note.-(4) Where the description against any heading or sub-heading is shown as “other”, then, the interpretation as provided in Note 2 shall apply.

- d. That, the Delhi VAT Department vide circular no 5 of 2006-07; F.6(34)/policy-1/VAT/2006/278-86; dated 21.06.2006 made it clear that in order to clear any doubt regarding the interpretation of entries containing HSN codes, it is intended to

clarify that where a four, six or eight digit code is mentioned in the schedule, it would cover all items falling under the code unless there is any specific exclusion prescribed for the same in the said Act.

- e. That, in accordance with the notes relating to entry no 84/sch III of the Act (given below 41A) and the circular issued by the Department dated 21.06.2006, it is clear that where the description against any heading or, as the case may be sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purpose of the said Tariff under that heading or sub-heading will be covered by the scope of entry no 84 of the sch III of the Act.
- f. That, Entry no. 84(170) of the Schedule III of the Delhi VAT Act reads as:-

84	Industrial Inputs	
170.	40.02	Synthetic rubber and factice derived from oils in primary forms or in plates, sheets or strip; mixtures of any product of heading No. 40.01 with any product of this heading, in primary forms or in plates, sheets or strip

Whereas corresponding HSN 4002 reads as :-

4002“Synthetic Rubber and Factice derived from Oils, in Primary Forms or in Plates, Sheets or Strip; Mixtures of any Product of Heading 4001 with any product of this Heading, in Primary Forms or in Plates, Sheets or Strip.

- Styrene-butadiene rubber (SBR); carboxylated styrene-butadiene rubber (XSBR)”

4002.1100 - - Latex

g. With the above averments , the applicant stated that SBR Latex falls under entry 84 (170), read with HSN 4002 of central Excise tariff, of the third schedule appended to the DVAT Act 2004 and attracts VAT @ 5%

6. The DR appearing on behalf of the department stated that as per the provisions of section 74B(5) of the DVAT Act 2004 “any assessment or re-assessment made or order passed under this Act or rules made thereunder by any person appointed under section 66 may be reviewed by such person suo motu or upon an application made in that behalf”, hence the application for review filed by the applicant is well within the purview of the Act and can be reviewed by this Court. The entry in 84(170) corresponds to the code in HSN 4002, and SBR latex has been included in HSN 4002 read with its sub-heading and sub-sub heading. Hence in terms of note no 3 appended below entry no 41A of the third schedule of the DVAT Act 2004, the product SBR latex can be taxed under schedule III of the DVAT Act 2004

7. I have heard both the sides and gone through the documents available on record. I am of the view that the earlier determination needs to be reviewed and that the product SBR latex is covered under entry 84(170) of the DVAT Act read with its HSN code and taxed @ 5%.

8. Held accordingly.

(Sanjeev Khirwar)
Commissioner, VAT

No.F. 374/CDVAT/2015/

Dated :

Copy for information and necessary action to :

1. M/s Manufacturers Traders Association, 33-Gujrat Vihar, Vikas Marg, Delhi-110 092
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Programmer (EDP) for uploading this order on web.
5. Assistant Commissioner (Policy)
6. President, Sales Tax Bar Association(Regd.)
7. Guard file.

(Sanjeev Khirwar)
Commissioner, VAT