

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/S.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. R. Rajasekharan Nair, Deputy Commissioner (Audit & Inspection), O/o.CCT, Tvpm.
2. A. Biji Kumari Amma, Deputy Commissioner (Legal Wing), O/o.CCT, Tvpm.
3. K.M. Althaf, Deputy Commissioner (Intelligence), O/o.D.C (Int), Tvpm.

Sub: KVAT Act, 2003 – Clarification U/s.94 – Whether Polypropylene Filament Yarn is a Textile Fabric and the Rate of Tax - Orders Issued.

- Read:
1. Letter No.C1-26956/09/CT dtd 20-7-09 of this Office.
 2. Judgment of the Hon'ble High Court of Kerala in WP(C) No.22757 of 2009(L) dated 11/8/2009.
 3. Clarification Order No.C3/17556/09/CT dtd 29/9/2009.
 4. This Office letter of even No. dtd 7/10/2009.

ORDER No.C3/41041/09/CT DATED 4/2/2010

1. The Deputy Commissioner, Commercial Taxes, Palakkad had requested a clarification on the rate of tax of the commodity Fabric of Polypropylene Filament Yarn. He had also explained the raw materials used and the manufacturing process of the commodity. The Deputy Commissioner reported that the manufacturing process of the commodity is as follows:

the primary raw materials are polypropylene granules and color master batches. These raw materials are sucked through Vacuum, heated, passed through extruder and melted. The material thus obtained is filtered and passed through the spinning unit to obtain continuous single filament which is called polypropylene filament. The filament are lapped on each other on a lapper and then subjected to thermal bonding to form the ultimate product that is a polypropylene sheet.

The issue was examined and it was found that the material is a Non-woven Fabric of Polypropylene Filament Yarn, hence the HSN Code 5407.30.90 (other) adopted by the dealer, M/s Aditya Fabrics, Palakkad was not correct. It was also found that the appropriate entry suited to this article in the Customs Tariff Act is under Chapter 56 with heading “Wadding, felt and non-wovens; special yarns; twine, cordage, ropes and cables and articles thereof”. The relevant HSN code for this item, 5603 reads:

“5603 – non-wovens, whether or not impregnated, coated, covered or laminated of man-made filaments”

The said HSN Code does not appear in any of the Schedules to the KVAT Act, 2003. For the above reasons, the Commissioner of Commercial Taxes vide reference 1st cited clarified to the Deputy Commissioner, Palakkad that the impugned commodity, Non-woven Fabric of Polypropylene Filament Yarn is taxable at 12.5% vide Entry 103 of SRO No.82/2006.

2. Sri.Aditya Goel, Proprietor, M/s. Aditya Fabrics, Palakkad aggrieved by the said decision filed a Writ Petition (C) before the Hon'ble High Court of Kerala. The Hon'ble Court vide judgment 2nd cited directed the Commissioner of Commercial Taxes, to re-consider the matter after giving an opportunity of hearing to both the sides, before proceeding with the issue. Accordingly this Office vide reference 4th cited requested the petitioner and the assessing

authority concerned i.e. Commercial Tax Officer, IInd Circle, Palakkad to attend the hearing. Sri.S Anil Kumar, Advocate, who appeared on behalf of the petitioner and the Commercial Tax Officer, IInd Circle, Palakkad, attended the hearing held on 19/10/2009.

3. The petitioner, M/s. Aditya Fabrics, Palakkad has referred the letter 1st cited and has contended that while issuing the same what weighed with the Department was the conventional system of weaving where the fibres cross each other over and under. The petitioner contends that by the development of technology, weaving has developed into different dimensions. The applicant has referred the meaning of the word 'Weave' given in Webster's Encyclopedic Unabridged Dictionary of English Language and contends that in order that an item should come under woven fabrics, it is not necessary that it should satisfy the conventional weaving process of yarns crossing each other over and under. Even in case where the fibres are blend together to form a fabric, it will come under the term woven fabric.

4. The process by which the synthetic filament fabric is manufactured is as follows:

The primary raw material is polypropylene granules and colour master batches. These are sucked through vacuum, heated and passed through extruder and melted. The materials thus obtained is filtered and passed through the spinning unit to obtain continuous single filament which is called polypropylene filament. The filaments are lapped on each other on a lapper and then subjected thermal bonding to form the ultimate product, i.e. 'the fabric'.

5. The petitioner has referred the Rules of Interpretation appended to the Schedules to the extent to which they are reportedly relevant to the context as follows:

The commodities in the schedules are allotted with Code Numbers, which are developed by the International Customs Organization as Harmonized System of Nomenclature (HSN) and adopted by the Customs Tariff Act, 1975. However, there are certain entries in the schedules for which HSN Numbers are not given. Those commodities which are given with HSN Number should be given the same meaning as given in the Customs Tariff Act, 1975. Those commodities, which are not given with HSN Number, should be interpreted, as the case may be, in common parlance or commercial parlance. While interpreting a commodity, if any inconsistency is observed between the meaning of a commodity without HSN Number and the meaning of a commodity with HSN Number, the commodity should be interpreted by including it in that entry which is having the HSN Number.....

i. The Commodities which are given four digits HSN Number shall include all those commodities coming under that heading of the HSN.

6. The petitioner has also referred the judgment of the Hon'ble Supreme Court in Reckitt Benckiser (India) Ltd Vs CCT& OTHERS (2008) 15 VST 10 (SC).

7. The petitioner contends that Chapter 54 of the Customs Tariff comes under section XI thereof. So the notes on the coverage of the section and the explanations given U/s XI would apply to Chapter 54 also, where such note specifically refers to Chapter 54 also. The applicant contends that Note 9 given at the beginning of the section XI reads:

"9. The woven fabrics of Chapters 50 to 55 include fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles. These layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding".

8. The petitioner contends that the manufacturing process adopted by the assessee squarely falls within in the above description. The applicant further contends that where chapter 5407 says “*Woven fabrics of synthetic filament yarn including woven fabrics obtained from materials of heading 5404*”, the term woven fabrics has to be interpreted, by applying the Rules of Interpretation appended to the KVAT Act, to cover “*fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles and bonded at the intersections of the yarns by an adhesive or thermal bonding*”. HSN 540730 says “*Fabrics specified in Note 9 to Section XI*”. The applicant argues that the product of the assessee which bears HSN Code 5407.30.90 will therefore fall under Entry 51 of the First Schedule to the Act by applying the rules of the interpretation.

9. The applicant has also contended that the Textiles Committee, Government of India, Ministry of Textiles had certified that the yarn is Synthetic monofilament yarn of Polypropylene and the fabric is “*Fabrics produced from Synthetic monofilament yarn of Polypropylene through thermal bonding*”. The applicant further contends that the fabric produced by the assessee is Fabrics specified in Note 9 to Section XI of the Customs Tariff Act and will be covered by HSN 540730 and that the commodity would fall under Entry 51 of the First Schedule to the Act.

10. The assessing authority concerned, i.e. CTO IInd Circle, Palakkad has referred the letter No.C1-26956/09/CT dtd 20/7/2009 and also the main contentions of the dealer. The assessing authority has contended that in common trade parlance Polypropylene sheet is not considered as textile. The assessing authority further contends that Polypropylene sheet is not covered by Entry 51 (6) (a) of the First Schedule to the Act with HSN Code 5407.30.90. Hence the Non-woven fabric of Polypropylene filament yarn would come under Entry 103 of SRO No. 82/2006 and is taxable at 12.5%.

11. The petitioner has also submitted a copy of the Order No.14/09 CE dated 22-10-09 of the Additional Commissioner, O/o The Commissioner of Central Excise, Customs And Service Tax, Calicut Commissionerate, Kerala, regarding adjudication of misclassification of this commodity between the headings 3920.20.20 (as alleged by the department) and 5407.30.90 (as adopted by the petitioner). After considering the relevant entries and the manufacturing processes, it was found therein that the product manufactured by the applicant would fall under the CET heading 5407.30.90 which is specifically for fabrics of Note 9 of section XI of the Central Excise Tariff Act.

12. The contentions of the petitioner were examined in detail. The two authorities, the Assistant Director, Regional Office of the Textile Commissioner, Coimbatore & Deputy Director, Textiles Committee, Government of India, Ministry of Textiles had examined the products and certified that the fabric manufactured by the petitioner is a technical Textile Fabrics and cannot be classified as plastic sheets.. The process of manufacture of this commodity is not disputed. As per the general rules for the interpretation of import tariff in the Customs Tariff Act classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. As per Note 9 to Section XI of the Customs Tariff Act, specifies *The woven fabrics of Chapter 50 to 55 include fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles. These layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding.* In this case, the layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding. Hence the

commodity manufactured by the petitioner is classified under the CET heading 5407.30.90, which is specifically for fabrics in Note 9 to Section XI. Accordingly the commodity in question is a textile fabric which falls under Entry 51 (6) (a) of the First Schedule to the Kerala Value Added Tax Act, 2003 and hence exempted.

13. Para (5) of the Clarification Order No.C3/17556/09/CT dated 29/9/09 also, stands modified to the above extent.

The issues raised above are clarified accordingly.

Deputy Commissioner (A&I)
O/o CCT

Deputy Commissioner (LW)
O/o CCT

Deputy Commissioner (Int)
O/o DC (Int), Tvpm.

To,

1. Sri. Aditya Goel,
Proprietor, Aditya Fabrics, NIDA,
Koyyamarakkad, Kanjikode,
Palakkad.
2. The Commercial Tax Officer, IInd Circle, Palakkad *for information and necessary action.*
3. Sri.V. Abdul Razak,
'Prabha', P.O.Nallalam,
Kozhikode - 673 027. *vide Clarification Order No.C3/17556/09/CT dtd 29/9/2009 on the application filed by M/s Malabar Treads, Manjeri.*
4. Copy to the disposal of File No. C3/17556/09/CT.