

Read : Application dt.23.02.2012 by Shree Deepak Export, registered under TIN-27600693362V.
Heard :Shri Mahabirprasad S.Deora, (Tax Consultant)

PROCEEDINGS
(under section-56(1)(e) and section-56(2) of MVAT Act, 2002)

No.DDQ-11/2012/Adm-6/05/B- 2

Mumbai, dt: 5/11/2015

M/s.Shree Deepak Export (the applicant) having address at Sanjay Building No.7, Mittal Industrial Estate, Sakinaka, Andheri Kurla Road, Andheri (East), Mumbai-400059 requests determination of the rate of tax on the product '1 side dotted gloves' sold under tax invoice No.SDE/853/2011-12 dt.01.02.2012.

02. FACTS AND CONTENTION

The application states that the applicant firm is an importer of Cotton Knitted and Dotted Gloves from China and normally selling the same at Mumbai within the State of Maharashtra. It is informed that the impugned gloves are cleared under Customs Tariff Chapter 61 under sub heading 61:16:1000 and further that the same is the Tariff entry under the Central Excise Schedule. It is contended that the impugned product is covered under the description 'Gloves, mittens and mitts, knitted or crocheted' against the Central Excise Tariff Heading (CETH) as notified for the notification issued for the purposes of the schedule entry C-81(b) of the Maharashtra Value Added Tax Act,2002 (MVAT Act). The applicant is of the opinion that the impugned product is taxable @5%. However, if it is held otherwise then a request for prospective effect is made for reasons thus-

- a. The applicant has been guided by notification entry and is charging tax @5%.
- b. All the buyers of the product have claimed input credit at the same rate. If prospective effect is not granted, then there shall be double taxation.

03. HEARING

Shri Mahabir Prasad Deora, (Tax Consultant) attended the hearing on dt.05.11.2014. He submitted that 'one side dotted gloves are imported and cleared under Customs Tariff 61169990. He further contended that the product is covered under the schedule entry C-81(b) "other articles of personal wear, clothing accessories, made up textile articles and sets as may be notified, from time to time, by the State Government in the Official Gazette." It is stated that the heading 6116 has been notified for the purposes of the notification under the aforesaid entry. It was alternatively submitted that if the contention was not acceptable, then the order be passed prospectively. It was informed that the gloves are used in industries, mostly firefighting. As to the PVC dots on the gloves and possibility of classification under Chapter 39 or 40 (heading 4015 (rubber gloves)), it was submitted that the impugned gloves are cleared under heading 6116.99.90 and therefore, the Sales Tax authorities have no jurisdiction to doubt the Excise & Customs classification. It was also informed that the impugned gloves have been cleared under this heading since long and in support of it, a copy of Bill of Entry evidencing clearance under heading 6116 in the year 2011 is filed.

04. OBSERVATIONS

I have gone through the facts of the case. The product for determination is a pair of knitted gloves having PVC dots on one side. The applicant is of the opinion that the impugned product is covered by the notification issued for the purposes of the schedule entry C-81(b) of the MVAT Act,2002. The schedule entry and the description under the notification therefor claimed applicable reads thus -

Schedule Entry C-81 (b)

other articles of personal wear, clothing accessories, made up textile articles and sets as may be notified, from time to time, by the State Government in the Official Gazette.

Notification dt.01.06.2005

<i>Central Excise Tariff Heading</i>	<i>Description</i>
6116	<i>Gloves, mittens and mitts, knitted or crocheted</i>

It can be seen from the above that the notification for the purposes of the schedule entry refers to the classification under Central Excise. The description under Central Excise for the purposes of the aforesaid heading reads thus :

Description under Central Excise

<i>Central Excise Tariff Heading</i>	<i>Description</i>
6116	<i>Gloves, mittens and mitts, knitted or crocheted</i>

Thus, it can be seen that the entire description against the Central Excise Tariff Heading 6116 has been taken for the purposes of the notification under the MVAT Act,2002. The applicant, being an importer, has given copies of Bill of Entry for Home Consumption evidencing clearance under the headings thus :

<i>Commodity Description</i>	<i>Date of Bill of Entry for Home Consumption</i>	<i>Tariff Heading</i>
<i>Working Cotton Natural Seamless Gloves with Dot (Undyed)</i>	<i>11.03.2014</i>	<i>61169990</i>
<i>Cotton Glove with Two Side PVC Dotted</i>	<i>12.04.2011</i>	<i>61161000</i>
<i>Cotton Glove with One Side PVC Dotted (Undyed) (Industrial Use)</i>	<i>12.04.2011</i>	<i>61161000</i>

What can be seen from the above is that though the sub-heading for the impugned product has differed over the period, the product remains classified under the main Tariff heading 6116. Since the description against the Heading 6116 under Central Excise has been adopted entirely for the purposes of the notification issued under the schedule entry under the MVAT Act,2002, all goods falling under the said heading stand covered by the impugned schedule entry C-81(b).

In the present case, the impugned product is a knitted glove with PVC dots on one side. The dots are placed at short intervals in straight lines and are such that the knitting, below and between the dots, is visible to the naked eye. Knitted gloves are classified under Chapter Heading 6116 (*Gloves, mittens and mitts, knitted or crocheted*) and the impugned product is a glove of the knitted variety. The description as appearing against the aforesaid Central Excise Heading has been considered in its entirety for the notification under the impugned schedule entry C-81(b). Therefore, the varying sub-headings under which the impugned product has been classified at different periods would not make a difference so long as the product is a knitted article falling under Chapter 61. In view thereof,

the impugned product qualifies for coverage under the aforesaid schedule entry. And the tax thereon would be 5%.

05. In view of the deliberations held hereinabove, it is determined thus -

ORDER


(under section-56(1)(e) and section-56(2) of MVAT Act, 2002)

No.DDQ-11/2012/Adm-6/05/B- 2

Mumbai, dt. 5/1/2015

The rate of tax on the product '1 side dotted gloves' sold under tax invoice No.SDE/853/2011-12 dt.01.02.2012 is 5% being covered by the notification issued for the purposes of the schedule entry C-81(b) of the Maharashtra Value Added Tax Act,2002.




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI