

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

No.342/CDVAT/2013/231

Dated: 21.01.2014.

M/s. Luxor Nano Technology Pvt. Ltd.
229, Okhla Industrial Estate, Phase-III
New Delhi-110020

ORDER

Present for the Applicant : Sh. H.C. Bhatia, Counsel
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

The above named applicant filed an application on 19/09/2013 under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and the question put up for determination under the aforesaid provision of law is as under:-

"What is the rate of tax on "Luxor Nano Clean i.e. Mobile/Gadget Cleaner and also Protector" under the Delhi Value Added Tax Act, 2004 ?"

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through demand draft No. 810676 dated 18.09.2013 of Punjab & Sind Bank, Bikrikar Bhawan, New Delhi.
3. M/s. Luxor Nano Technology Pvt. Ltd., 229, Okhla Industrial Estate, Phase-III, New Delhi-110020, is a registered dealer having TIN 07530376298.

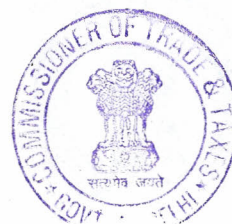
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4. Sh. H.C. Bhatia, Counsel of the Company appeared and submitted that the applicant is engaged in the manufacture and sale of a new product "Mobile/Gadget Cleaner and Also Protector" under its brand name "Luxor NANO Clean" based on nano-technology, which is suitable for cleaning and also for protecting mobile phone's screen. Incidentally, it can also be used for cleaning and protecting other gadgets like laptops, monitors, LCD screens, tablets and lenses of spectacles. However, the principal use of product is for cleaning and protecting the screen of mobile phones. The product is specially formulated with Gold Nano particles to clean and protect the screens of mobile phones in a better way. Once the product is applied on a surface, 3-4 mm thick nano layer is formed on the treated surface. It protects mobile phone's screen from dust/dirt accumulation. Post application, even finger prints can be easily removed and dust and dirt does not penetrate into the surface and the surface remains clean for a longer time. The product is eco-friendly containing nanionic surfactant, alkictrate, chloroauric acid-solution, propylene glycol methyl Ether and Aqua. Ecological properties of this product are thoroughly investigated according to OECD Regulation 209. The product is also odourless, clear and soluble in water. The product is also not ignitable, corrosive, reactive or toxic and is, therefore, not a hazardous waste.

He further submitted that the product of the applicant - Luxor NANO Clean i.e. Mobile/Gadget Cleaner & Also Protector" is an accessory of mobile phone covered by Entry No.41 of the Third Schedule to the DVAT Act and, is, therefore, taxable @ 5%. Entry 41 of the Third Schedule to the Delhi Value Added Tax Act, 2004 reads as under:



Entry No. 41

“41. Computers, telephone and parts thereof, teleprinter and wireless equipment and parts thereof, Mobile phone and all mobile accessories costing upto rupees ten thousand.”

The item “Luxor NANO Clean – Mobile/Gadget cleaner and also protector” is also covered by some of the other entries of the Third Schedule, namely, S. No.133(a) of Entry No.84 and Entry No.115 which read as under:

Entry No.84

“84. Industrial Inputs as specified at Part ‘A’ of this Notification:

Serial No.	Heading No.	Sub Heading No.	Description of goods
(1)	(2)	(3)	(4)
1.		
133(a)	34.02		Silicon surfacted, Non-ionic, Sulphonated or sulphated oxide, chlorine castor oil

Under the Central Excise Tariff, “Luxor Nano Clean i.e. mobile/Gadget cleaner & also Protector” is covered under Heading No.3402 and chargeable to Excise Duty under the said Head. Therefore, as per HSN specification, it is covered by Entry No. 84, S.No.133(a).

The Entry No.115 of the Third Schedule reads as under:

“115. Spectacles, parts and components thereof, contact lens and lens cleaner.”

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The main function of "Mobile/Gadget Cleaner and also Protector" is to clean and protect screens of mobile phones. It is only incidentally that it can also be used for cleaning and protecting other gadgets like laptops, monitors, LCD screens, tablets, and lenses of spectacles etc. thus, the product can be said to be covered by any of the aforesaid entries. However, it is, particularly and specifically covered under entry No.41 of the Third Schedule as an accessory of the mobile phone. The other dealers in trade dealing in similar product are charging tax @ 5%.

That in view of the facts explained above the product being new, though the applicant had started charging tax @ 12.5%, but a number of customers have raised objection to the charging of tax @ 12.5% as other dealers are charging tax @ 5%. This is adversely affecting the business of the applicant.

During hearing, on 30.10.2013, the counsel for the dealer submitted written submission containing definition of the word 'accessory' based on the various judgements passed by different courts. The dealer was also asked to file laboratory report of the product to support his contention that the product when used forms a permanent thin layer on the mobile phone. Accordingly, the dealer submitted test certificate dated 30.07.2013 from Shriram Institute for Industrial Research, Delhi-110007 vide his letter dated 19.11.2013. The report states that :

The product contains Gold Nano particles and has excellent performance for finger print removal on glass plate, is also 80% biodegradability (Ecofriendliness) after 28 days and contains antistatic properties. In the said report, there is no description of chemicals used in the product and also not clear whether it forms permanent thin layer or not. The test certificate mentions that there was a decrease in resistivity equal to $0.7 \times 10^9 \Omega$ on plastic surface on which the sample



was applied. However, the applicant in his letter has claimed that the product not only cleans the surface but also forms a layer which due to its antistatic properties does not allow the surface to get contaminated by any extraneous material. The dealer has submitted newspaper cutting containing advertisement of the product under consideration.

5. The DR appearing on behalf of the department stated that the word 'accessory' has not been defined in the Act nor is it a technical or scientific term. Its meanings, therefore, have to be gathered from other sources i.e. common parlance or how the people engaged in the trade recognize the product.

The dictionary meanings of 'accessory', which are as under:

- (a) Black's Law Dictionary defines 'accessory' as "anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment; A thing of subordinate importance; Aiding or contributing in secondary way of assisting in or contributing to as a subordinate".
- (b) In the New English Dictionary by W.A. Craigie the word 'accessory' when used in relation to a thing means "something contributing in a subordinate degree to a general result or effect; an adjunct or accompaniment".

The DR stated that the dealer has claimed that it is a new product and has been manufactured for the first time in India. It has been manufactured by processing various chemicals and gold particles in nano form have also been put into it. It shall not be covered under sub-entry no.133(a) of Entry No.84 of Third Schedule appended to the DVAT Act because industrial inputs are inputs (materials) to the extent they are specified raw materials(in this case chemicals) and once they are processed with other raw materials they are converted into a finished product, lose their individual identity and become unspecified/modified item.

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The DR stated that the question of the applicant is about the 'rate of tax on Luxor Nano Clean i.e. Mobile/Gadget Cleaner and also Protector' and not about the lens cleaner. In case, the dealer wants to determine whether the said product is a lens cleaner or not, he should submit a separate application under section 84 of the Act.

The DR further stated that the term 'accessories' is used to describe goods which may have been manufactured for use as an aid or addition to a particular product, though, they may serve as aids to other kinds of products also. Some of the examples of accessories are antenna of TV, number plate of the motor vehicle, leather cases, fair meters of auto-rickshaws, ribbon of a typewriter, rear view mirror, speakers of car stereo, UPS etc. Based on the common parlance meaning of 'accessories', are the goods which are used as an aid or addition and are connected to the main product. The product of the dealer is a combination of various chemicals and is a consumable, hence cannot be covered as 'accessory' under Entry No.41 of the DVAT Act.

The counsel for the dealer referred to the judgement in case of State of Karnataka v. R.K. Powergen Pvt. Ltd. [2012]56 VST 193(Kar), wherein it has been held that twist drills, cutters, reamers, taps, chipper knives, drill bits and reamers are parts and accessories of machines. The contention that they are consumables does not take them out of purview of parts and accessories under Karnataka Tax on entry of goods into local areas for consumption use or sale therein Act (27 of 1979), S. 2(B); SCH. I, Entry 52.

In reply to the above, the DR stated that in the said case the court was examining in the context of levy of tax under the provisions of the Karnataka Tax on Entry of Goods Act, 1979 and as to whether the product of the assessee, was one within the scope of entry 52 of



Schedule I to the Act. He further stated that there are different purposes and subjecting to tax different types of goods, events, transactions and the like. So, entries in one enactment not to be construed with reference to the entries in another.

6. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and heard both the parties. Here, it is relevant to mention to para nos. 9, 10 and 11 of the judgement 'Commissioner, Sales Tax vs Free India Cycle Industries, equivalent citations 1970 26 STC 428 All' of the Allahabad High Court.

"9. In Volume I of Words and Phrases, Permanent Edition, there is a topic dealing with automobile accessories. Various examples of parts and accessories are given such as speedometers, gears, shafts, bumper bars, brackets and storage batteries. As to what are not accessories the following two extracts from page 238 may be quoted:

(i) Electric cigar lighters, combination electric cigar lighters and ash receivers held not subject to manufacturer's excise tax as 'accessory' for automobiles.....

(ii) Top covers, back curtains, wedge-shaped cushions and seat and floor coverings held not taxable as 'parts' or 'accessories' for automobiles.....' Crawford Mfg. Co. v. United States Ct. Cl. 50F. 2nd 280-281.

10. If seat and floor coverings of a car are not accessories thereof, there is no reason why seat covers of cycles should be regarded as accessories of cycles. We are, therefore, of the opinion that an article used for protection and decoration of one of the parts cannot be regarded as accessory of the vehicle.

11. We, therefore, agree with the Judge (Revisions) that rexine covers are not accessories of bicycles, tricycles and cycle rickshaws within the meaning of entry No.34 of the relevant notification."

7. It is clear that an article used for protection and decoration of one of the parts cannot be regarded as accessory. In case of mobile and other gadgets, the leather and leather like covers, ear phones, chargers, data

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cable, memory chip, are the known accessories which increase the efficiency and convenience of the entire product i.e. mobile and other electronic gadgets whereas the dealer claims that his product cleans/protects the screen of the mobile/gadgets does not qualify as accessory as held in the aforesaid judgement. The product of the dealer has been manufactured by processing various chemicals and gold particles in nano form have also been put into it. So, I am of the considered view that the product of the dealer is not covered by entry no.84 or 115 of the Third Schedule, and any other entry of any other Schedule appended to the DVAT Act, 2004, hence, is an unspecified item covered under section 4(1)(e) of the Act and is taxable @ 12.5%.

8. Held accordingly.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Value Added Tax Officer (Policy Branch)
5. Programmer (EDP) for uploading the order on the web.
6. President, Sales Tax Bar Association (Regd.)
7. Guard File

(Prashant Goyal)
Commissioner, VAT

