

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

No.344/CDVAT/2013/232

Dated: 27-01-2014

M/s. Aluminium Trading Company
Shop No.5/5, Desh Bandhu Gupta Road
Pahar Ganj, New Delhi-110055

ORDER

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

The above named applicant filed an application on 10/10/2013 under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and requested to determine the rate of tax in respect of the following items under the aforesaid provision of law:-

Sl. No.	Description of Product
1.	0.040 Aluminium Foil with Poly Laminated of 150 Gauge (SOFT) BSO
2.	0.030 Aluminium Foil with Poly Laminated
3.	0.040 Aluminium Foil with Poly Laminated
4.	0.020 Aluminium Blister Foil with 3-5 GSM HSL Coated (DSO)
5.	0.020 Aluminium Blister Foil with 4-6 GSM VMCH Coated (DSO)
6.	0.025 Aluminium Blister Foil with 3-5 GSM HSL Coated (DSO)
7.	0.025 Aluminium Blister Foil with 4-6 GSM VMCH Coated (DSO)
8.	0.020 Aluminium Blister Foil
9.	0.025 Aluminium Blister Foil
10.	Gauge Variation Aluminium Coil
11.	2.50mm thickness X 1220mm Width X 2440mm Length Aluminium Sheet
12.	4.3mm Thickness X 18.8mm Dia Aluminium Slug





13.	4.5mm Thickness X 12.5mm Dia Aluminium Slug
14.	4.5mm Thickness X 15.7mm Dia Aluminium Slug
15.	4.5mm Thickness X 22mm Dia Aluminium Slug
16.	0.180mm X 867mm Width X 610mm Length Aluminium PP CAP
17.	0.180mm X 870mm Width X 692mm Length Aluminium PP CAP
18.	0.011mm House Foil
19.	0.018mm House Foil

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.9,500/- paid through demand draft Nos. 098292 dated 05.10.2013 of State Bank of Hyderabad, Vikas Marg, Delhi and No. 853517 dated 11.10.2013 of Punjab & Sind Bank, Pahar Ganj, New Delhi.
3. M/s. Alluminium Trading Company, is a registered dealer having TIN 07490019166. Sh. Manish Sharma, Counsel of the Company appeared and reiterated the grounds of the determination application and requested to determine the rate of tax on the above mentioned items. The counsel also submitted the samples of aluminium foil, Slug & Circle.

For examining the products under consideration, it is necessary to understand the meaning of word 'extrusion', 'rolling', 'slug', 'sheet' and their manufacturing process.

Meaning of Extrusion

Extrusion is a process used to create objects of a fixed cross-sectional profile. A material is pushed or drawn through a die of the desired cross-section. The two main advantages of this process over other manufacturing processes are its ability to create very complex cross-sections, and to work materials that are brittle, because the material only encounters compressive and shear stresses. It also forms finished parts with an excellent surface finish.

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Extrusion may be continuous (theoretically producing indefinitely long material) or semi-continuous (producing many pieces). The extrusion process can be done with the material hot or cold.

Commonly extruded materials include metals, polymers, ceramics, concrete, play dough, and foodstuffs. The products of extrusion are generally called "extrudates".

Hollow cavities within extruded material cannot be produced using a simple flat extrusion die, because there would be no way to support the center barrier of the die. Instead, the die assumes the shape of a block with depth, beginning first with a shape profile that supports the center section. The die shape then internally changes along its length into the final shape, with the suspended center pieces supported from the back of the die.

Process of Extrusion

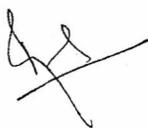
The process begins by heating the stock material (for hot or warm extrusion). It is then loaded into the container in the press. A dummy block is placed behind it where the ram then presses on the material to push it out of the die. Afterward the extrusion is stretched in order to straighten it. If better properties are required then it may be heat treated or cold worked.

The extrusion ratio is defined as the starting cross-sectional area divided by the cross-sectional area of the final extrusion. One of the main advantages of the extrusion process is that this ratio can be very large while still producing quality parts.

Hot extrusion

Hot extrusion is a hot working process, which means it is done above the material's recrystallization temperature to keep the material from work hardening and to make it easier to push the material through the die. Most hot extrusions are done on horizontal hydraulic presses that range from 230 to 11,000 metric tons (250 to 12,000 short tons). Pressures range from 30 to 700 MPa (4,400 to 100,000 psi), therefore lubrication is required, which can be oil or graphite for lower temperature extrusions, or glass powder for higher temperature extrusions. The biggest disadvantage of this process is its cost for machinery and its upkeep.

The extrusion process is generally economical when producing between several kilograms (pounds) and many tons, depending on the material being extruded. There is a crossover point where roll forming becomes more economical. For instance, some steels become more economical to roll if producing more than 20,000 kg (50,000 lb).



Cold extrusion

Cold extrusion is done at room temperature or near room temperature. The advantages of this over hot extrusion are the lack of oxidation, higher strength due to cold working, closer tolerances, good surface finish, and fast extrusion speeds if the material is subject to hot shortness.

Materials that are commonly cold extruded include: lead, tin, aluminum, copper, zirconium, titanium, molybdenum, beryllium, vanadium, niobium, and steel.

Examples of products produced by this process are: collapsible tubes, fire extinguisher cases, shock absorber cylinders and gear blanks.

Warm extrusion

Warm extrusion is done above room temperature, but below the recrystallization temperature of the material the temperatures ranges from 800 to 1800 °F (424 to 975 °C). It is usually used to achieve the proper balance of required forces, ductility and final extrusion properties.

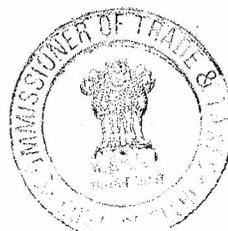
Aluminium is the most commonly extruded material. Aluminium can be hot or cold extruded. If it is hot extruded it is heated to 575 to 1100°F (300 to 600°C). Examples of products include profiles for tracks, frames, rails, mullions, and heat sinks.

Meaning and process of Rolling

In metalworking, rolling is a metal forming process in which metal stock is passed through one or more pairs of rolls to reduce the thickness and to make the thickness uniform. Rolling is classified according to the temperature of the metal rolled. If the temperature of the metal is above its recrystallization temperature, then the process is termed as hot rolling. If the temperature of the metal is below its recrystallization temperature, the process is termed as cold rolling.

Meaning of Slug

- (i) Any of various snaillike terrestrial gastropods having no shell or only a rudimentary one, feeding on plants and a pest of leafy garden crops.
- (ii) A nudi branch
- (iii) A metal disk used as a coin or token, generally counterfeit.
- (iv) A piece of lead or other metal for firing from a gun.
- (v) Any heavy piece of crude metal.



Meaning of Sheet

A flat piece of cloth, paper, or other material.

Production process of Aluminium Sheet

When aluminum is passed between rolls under pressure, it becomes thinner and longer in the direction in which it is moving. This simple process is the basis for aluminum's most widely used forms: plate, sheet, and foil.

Aluminum can be rolled and re-rolled until it reaches the desired thickness or gage. When the rolling process is stopped largely determines whether the final product will be plate (0.250 inch thick or more), sheet (0.249 to 0.006 inch), or foil (0.0079 inch or less).

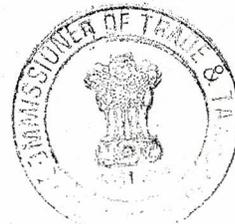
4. The DR submitted that the scope of relevant entries under Schedule III appended to the DVAT Act, are as under:

(i) (a) Entry No.84 – Industrial Inputs

183.	-	7607.60	Aseptic packaging aluminium foil of thickness less than 0.2 mm and backed by paper and LDPE.
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The items mentioned at Sl. No.1 to 3 are poly laminated foils, item no. 4 to 9 are coated foils and item no.18 and 19 are aluminium foils without any backing or coating also known as House Foils. DR stated that sub entry no.183 of entry no.84 – 'Industrial Inputs' of 'Third Schedule appended to the Act is the only entry which explicitly mentions about the Aluminium foils and to qualify for the said entry, it is required that the thickness of the aluminium foil should not be less than 0.2mm and it should be backed by paper and LDPE. But the products under consideration do not qualify because items mentioned at sl. No.1 to 9 are backed by LDPE only and items mentioned at sl. no.18 and 19 without any backing whereas the requirement to qualify for the said entry these items should be backed by both i.e. paper as well as LDPE. So, all the aluminium foils under consideration do not fall under sub entry no.183 of entry no.84 – 'Industrial Inputs' of Third Schedule appended to the Act.

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- (i) (b) All entries relating to ferrous and non-ferrous metals of Delhi VAT Schedule and Schedules of neighbouring States i.e. UP, Haryana and Rajasthan have been reproduced for comparison.

Entry No.28 of DVAT Act

'Ferrous and non-ferrous metals and alloys; non-metals such as aluminium, copper, zinc and extrusions of those.'

Entry no.48 of Schedule II appended to UP VAT Act, 2008

'Ferrous & non-ferrous metals & alloys, non-metals, such as aluminium, copper, zinc & extrusions of those including rods, tubes, angles, channels and sections of all size and measurement and rolled products (including sheets, plates and circles of all size and measurement); wires and wire drawings.'

Entry no.56 of Schedule C appended to Haryana VAT Act, 2003

'Non-ferrous scrap, ferrous and non-ferrous metals and alloys and extrusions and rolled products thereof

Explanation- This entry includes ingots, bars, slabs, sheets, circles, strips, rods, wires (not including electric wires and super enameled copper wire), tubes, angles and scrap.'

Entry no.49 and 235 of Schedule IV appended to Rajasthan, VAT Act, 2003

'49. Ferrous and non-ferrous metals and alloys, non-metals, such as aluminum, copper, zinc and extrusions of those.'

'235. Non ferrous metal sheet (including foil), circle, wire, strips and Scrap'

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The aluminium foil is produced by Aluminium Rolling Mill Technology, the process of which is given above. Aluminium foil is produced by rolling sheet ingots cast from molten billet aluminium, then re-rolling on sheet and foil rolling mills to the desired thickness, or by continuously casting and cold rolling. To maintain a constant thickness in aluminium foil production, beta radiation is passed through the foil to a sensor on the other side. If the intensity becomes too high, then the rollers adjust, increasing the thickness. If the intensities become too low and the foil has become too thick, the rollers apply more pressure, causing the foil to be made thinner. Some lubrication is needed during the rolling stages; otherwise, the foil surface can become marked with a herringbone pattern. These lubricants are sprayed on the foil surface before passing through the mill rolls. Kerosene based lubricants are commonly used, although oils approved for food contact must be used for foil intended for food packaging. Aluminium becomes work hardened during the cold rolling process and is annealed for most purposes. The rolls of foil are heated until the degree of softness is reached, which may be up to 340 °C (644 °F) for 12 hours. During this heating, the lubricating oils are burned off, leaving a dry surface. Lubricant oils may not be completely burnt off for hard temper rolls, which can make subsequent coating or printing more difficult. For getting the final product the rolls of aluminium foil are then slit on slitter rewinding machines into smaller rolls. Roll slitting and rewinding is an essential part of the finishing process.

The DR stated that entry no. 28 of Third Schedule appended of DVAT Act, 2004, covers only extrusion process which is different from this rolling process. Hence, the items mentioned at sl. No.1 to 9, 18 and 19 are not covered under the said entry.



The DR further stated that in Trade Circles, a decision of the UP Tribunal, 2011 NTN (Vol.46) Tribunal 157 (Commercial Taxes Tribunal, U.P. Lucknow) (Full Bench), which is based on the decision as laid down by Punjab and Haryana High Court in Excise & Taxation Commissioner, Haryana Vs. Print-O-Pack [2009] 26 VST 667], that Aluminium is a non-ferrous metal and Foils made of aluminium is nothing else but thin aluminium sheet – The said ruling relates to ‘Aluminium Foil’ and is fully applicable to the present set of facts – ‘Aluminium foil’ is taxable at the rate of 4% under Entry No.48 of Schedule-II, Part A, appended to the U.P. Value Added Tax, 2008.

But the above said decision of the Punjab & Haryana Court has been examined by Rajasthan High Court – Jodhpur in the case of M/s. Miracle Foils (P) Ltd. Vs. C.T.O., Special Circle, Pali on 1 November, 2011. The Hon’ble Court observed that the case of Excise and Taxation Commissioner, Haryana Vs. Print-O-Pack was not directly related to the present controversy.

“In the said case, the assessing authority consistently took Aluminium foil to mean Aluminium sheet and those orders were accepted by the Revenue without challenge either before the appellate authority or before the Tribunal and those orders attained finality, therefore, the Punjab & Haryana High Court held that it is not possible to permit re-opening of the issue; meaning thereby, in the case of Print-O-Pack (supra) Punjab & Haryana High Court refrained from adjudicating the controversy on merit because orders were accepted by the Revenue without challenge and those orders had attained finality, therefore, the aforesaid question was not adjudicated on merit.”



In the last para of the said judgement of Rajasthan High Court, it is observed that "Therefore, the ground of the petitioner is totally untenable for the purpose of taxing statute. Learned Tribunal elaborately discussed all the judgments cited by the assessee, therefore, there is no error in the adjudication made by the Tax Board (Rajasthan) in holding that "Aluminium foil" is different commodity than the Aluminium sheet."

The DR further stated that the entry no.28 of Third Schedule appended to the Act even does not contain Aluminium Sheet. So, aluminium foil without paper and LDPE backing and also the House Foil which is without any backing are not covered by any of the entry of any of the schedules of the DVAT Act.

- (ii) Item No.10 to 17 i.e. aluminium plates, sheets, strips & pp cap aluminium foils are produced from rolling process whereas the entry no. 28 of the Third Schedule appended to the DVAT Act, covers only extrusions of aluminium. Further, item No. 12 to 15 are covered under aluminium circles which besides rolling process also involves 'slugs', the process of which has been defined above. So for producing aluminium plates, sheets, circles and strips etc. rolled technology is used which is different from extrusion technology mentioned in the entry no.28 of the Third Schedule appended to DVAT Act.

In contrary to entry no. 28 of DVAT Act, the entry no. 48 of Schedule II appended to UP VAT Act specifically covers rolled products (including sheets, plates and circles of all size and measurement). Also, the entry no. 56 of Schedule C appended to Haryana Vat Act, 2003 also covers rolled products and the explanation includes sheets, circles, strips, rods and wires. Similarly, the entry no. 235 of Schedule IV of Rajasthan VAT Act covers Non ferrous metal sheet (including foil), circle, wire, strips

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and Scrap. So, item no.10 to 17 are not covered by any of the entry of any of the schedules of the DVAT Act. It is pertinent to point out here that despite the word 'including foil' mentioned in bracket against metal sheet, the above decision of the Rajasthan High Court held that the aluminium foil is different from metal sheet(including foil). So, the PP Cap Aluminium foil is different from metal sheet.

5. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004, various schedules appended to the DVAT Act, 2004, nomenclature of the products under consideration and after having heard both the parties, I am of the considered view that all the products of the dealer (as mentioned in the table given at para no.1 of this Order) are not covered under any of the entry of any Schedule appended to the DVAT Act, 2004, hence, are unspecified items covered under section 4(1)(e) of the Act and are taxable @ 12.5%.
6. Held accordingly.


(Prashant Goyal)
Commissioner, VAT

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6. President, Sales Tax Bar Association (Regd.)
7. Guard File


(Prashant Goyal)
Commissioner, VAT

