

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

No.362/CDVAT/2014/269

Date: 30.06.2014

M/s. C.B. Gupta & Sons,
B-122, Ashok Vihar, Phase-I,
Delhi-110052.

ORDER

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

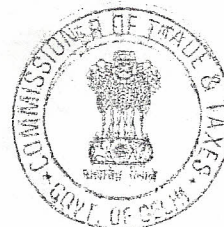
The above named applicant filed an application on 02/04/2014 under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and the question put up for determination under the aforesaid provision of law is as under:-

"Whether Aluminium sheets, coils and foils fall within the ambit of Entry 28 of III Schedule of DVAT Act, 2004 and chargeable to tax @ 5% ?"

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through demand draft No. 442311 dated 02.04.2014 of Punjab & Sind Bank, Indraprastha Estate, Bikrikar Bhawan, New Delhi-110002.
3. M/s. C.B. Gupta & Sons proposes to start the business of dealing in Aluminium Sheets, foils and coils and sought the adjudication of the aforesaid question. Sh. Balram Sangal, Counsel of the applicant appeared and reiterated the facts and grounds of the application. Counsel, during hearing on 11.06.2014, submitted written arguments along with copies of judgements in support of his contention. A brief detail of his written submissions, is as under:

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02/07/14






The counsel referred to entry No. 28 of IIIrd Schedule, which reads as under:

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

According to the counsel, when the above entry is analysed vis a vis the ‘Aluminium’ appearing in this entry which is preceded by the words ‘such as’, - the words ‘i.e.’ are illustrative and not exhaustive and therefore will include - ‘Aluminium’ its species and products including all as well rolled products like aluminium sheets, foils and coils which are manufactured by way of heating the ingots in aluminium molten metal being subjected to continuous casting process. The Hon’ble Supreme Court of India in the case of Royal Hatcheries (P) Ltd. vs State of Andhra Pradesh and another reported as 92 STC 239 held that the words such as’ are illustrative and not exhaustive.

In most of the States the aluminium rolled products such as plates, sheets, coils and foils etc. are treated as falling with in the ambit of term aluminium and are taxed at lower rate of tax now @ 5%, 4%.

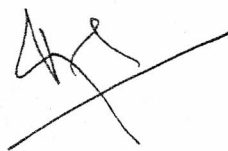
In the first instance, reference is made to a clarification dated 15.07.1986 published in 27 DSTC (1986-87) page N-31 in which the Department opined that for the purpose of interpreting term ‘non ferrous metal’, iron and steel as enumerated in Sec. 14 (iv) of the Central Act is a good guidance to say that non ferrous metal in the shapes as given in iron & steel shall be deemed to be non ferrous metal. The text of the said clarification is given below:



"The term metal implies substance and it can be in any form. For purposes of clarity and uniformity it may be stated that the Parliament has considered many shapes as enumerated in Section 14(iv) of the Central Sales Tax Act, 1956 as metal - Iron and Steel, and those shapes are good guidance adoptable for purposes of interpreting the present entry "All non ferrous metals". You are, therefore, informed that non ferrous metals in those shapes shall be deemed to be non ferrous metal."

It is a basic rule of interpretation that if a provision is capable of two opinions, the opinion which is in the favour of the assessee should be given effect to. The Hon'ble Supreme Court of India has time and again held so. Accordingly, Aluminium would also include the rolled products like Aluminium Sheets, foils and coils as well and if the contrary is pleaded, the principle when two opinions comes in play, the opinion which is beneficial to the assessee shall prevail.

The applicant maintains that in common trade parlance aluminium includes aluminium sheets, foils and coils as well. A well settled rule of construction is that the words used in fiscal statute should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. This situation is well settled that words of everyday use occurring in a taxing statute must be construed not in their scientific or technical sense but as understood in common trade parlance and as a is understood in commercial sense. In case if two interpretation of a word or expression are possible, the meaning which leans to the benefit of the subject has to be adopted, as referred to above.



The aluminium sheets, foils and coils etc. are being constantly taxed @ 4% and now 5% from the very inception of DVAT Act, 2004 i.e. April 2005. The VAT Department is accepting the returns u/s. 32(1A) of DVAT Act of Aluminium dealers selling aluminium sheets, foils and coils etc. depositing tax @ 4/5% and is also simultaneously making Default orders of tax and interest u/s. 32(1A) of the Act assessing tax @ 4/5% upon such dealers. It being the consistent opinion of the Department that the items under consideration are taxable as falling within the ambit of Entry 28 of IIIrd Schedule and taxable @ 4% /5%, the Department cannot now take a U turn and change its opinion and start subjecting/levying tax @ 12.5% upon the sale of Aluminium sheets, foils and coils etc.

It is a matter of common knowledge that number of aluminium products including aluminium sheet, coils and foils are being subjected to tax @ 4% and later on @ 5% from the very date of enforcement of DVAT Act, 2004 in Delhi. In such circumstances, there was no occasion or justification to hold that the said items are not covered under Entry 28 of IIIrd Schedule of DVAT Act in as much as the entry 28 of IIIrd Schedule continues to be the same from the very commencement of the Act.

Reference can also be usefully made to the principle that goods are to be bought in 'residual entry' if such entry is incapable of being brought under any other item. Reference is made to a judgment of Shriya Enterprises Vs. Commissioner CT (2012) 51 VST 413 (Uttra). In addition there to it is submitted that the 'burden to prove that a product falls within a particular tariff' is always on the revenue. Reference is made to a judgement of Supreme Court of India delivered in the case of Hindustan Poles Corpn Vs. Commissioner Central Excise reported as (2006) 145 STC 625 (SC). There are a large number of judgments on



these two issues but is considered that multiplicity of citations be avoided.

4. The Departmental Representative stated that vide determination order No.344/CDVAT/2013/232 dated 27.01.2014, the items under determination of present application i.e. Aluminium Sheets, Coils and Foils have already been decided. So, as per section 84(8) of Delhi Value Added Tax Act, 2004, the present application is not maintainable.
5. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and the relevant provisions of the Act and I am of the considered view that the application is not maintainable under Section 84(8) of the Delhi Value Added Tax Act, 2004.
6. 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

