

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

No.330/CDVAT/2013/117-122

Dated:25-04-2013

M/s Delhi Stationers Association (Regd.)
3932, Gali Satte Wali,
Nai Sarak, Delhi-110006

ORDER

Present for the Applicant : Sh. Rakesh Garg, FCA
Present for the Department : Sh. T.C. Sharma, DR

The above named applicant filed an application on 07/03/2013 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: -

"Whether the 'Compasses, Dividers, Foot Rules (up to 6")', Set squares, Erasers, Protectors and Stencils (up to 6")', all in loose forms," are covered under Entry no. 31 of the First Schedule of the DVAT Act, 2004 reads as "Slate and slate pencils, geometry boxes, colour boxes, crayons and pencil sharpners" and hence, exempt from tax with effect from 21.06.2012?"

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid online through Challan from Punjab and Sind bank to the consolidated fund of Govt. of NCT of Delhi.
3. M/s Delhi Stationers Association (Regd.) is an association whose members, inter-alia, are engaged in the manufacturing and trading of stationery goods, geometry boxes and its contents, namely Compasses, Dividers, Foot Rules, Set Squares, Erasers, Protectors and Stencils, either separately in loose forms or collectively as a set in the geometry box.

4. Sh. Rakesh Garg, FCA & Counsel of the applicant appeared and reiterated the grounds of the determination application. He referred to the determination in case of M/s G.R. Stationary Mart, wherein one of the question for determination was “Whether or not the Compasses, Dividers, Foot Rules, Set squares, Erasers, Protectors, Pro-circles and Stencils in loose forms are covered under Entry no. 76 of the Third Schedule of the DVAT Act, 2004 and hence, taxable @4% (at present 5%) with effect from 11.05.2005?”

He further stated that in the said determination order, it was held that geometry boxes sold in a compact form i.e. with the geometrical instruments i.e. Compasses, Dividers, Foot-rules (of 6” maximum in length), Setsquares, Protectors that are contained in the geometry box are used by the students in the schools too when sold individually and in loose form and shall also be covered by the then entry no.76 (now shifted to entry no. 31 of First Schedule) of the IIIrd Schedule of DVAT Act, 2004. However, the item erasers, pro-circles and stencils were excluded from the geometrical instruments.

Subsequently, the dealer filed an appeal before the Hon’ble Appellate Tribunal which in turn vide its order no. ATVAT/2006/6070 dated 13.10.2006 modified the said determination order to the extent that small erasers and stencils of the size of 6” form part of geometry boxes and therefore will attract tax @4%, when sold individually. Further, it was upheld by the hon’ble tribunal that pro-circles are not part of geometry boxes and therefore, would attract tax @12.5% when sold individually.

5. The Departmental Representative referred to the determination in case of M/s G.R. Stationery Mart wherein it has already been held that geometrical instruments i.e. Compasses, Dividers, Foot-rules (of 6” maximum in length), Setsquares, Protectors when sold individually and in loose form or sold in compact form with the above mentioned geometrical instruments shall be part of ‘geometry boxes;. Further, in the said determination case the hon’ble Appellate Tribunal also allowed ‘small erasers’ and ‘stencils of the size of 6” to form part of ‘geometry box’ has already been clarified/defined under the DVAT Act, 2004. As, the subject matter of the application has already been decided so, as per sub-section 8 of section 84 of the DVAT Act, 2004 and stated that the question is not entertainable.

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. I am of the considered view that the question being asked by the applicant in his application is not entertainable under sub-section 8 of section 84 of the DVAT Act, 2004. Hence, order passed in the above mentioned orders shall apply and hold good in this case too in respect of question put up by the applicant for determination. 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. President, Sales Tax Bar Association (Regd.)
6. Guard File

(Prashant Goyal)
Commissioner, VAT