

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

No.334/CDVAT/2013/ 171

Dated: 08-07-2013

M/s Ocean Water-tech India Pvt. Ltd.
BF-1, Mohan Tower, Commercial Complex,
Wazirpur Industrial Area, Delhi-110052

ORDER

Present for the Applicant : Sh. Raj Kishan Singla, CA
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

The above named applicant filed an application on 22/03/2013 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 Item Cotton Stockinette known as Fishnet-Fabric/Cotton Knitted Cloth is exempt from Tax in Delhi & outside the state or if taxable, let us know what will be tax rate if sold in Delhi or outside Delhi?”

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through bank demand draft no. '029128' dated 18.03.2013.
3. M/s Ocean Water-tech India Pvt. Ltd. is a registered dealer with this department having TIN 07690226442.
4. Sh. Raj Kishan Singla, Counsel for the applicant appeared and reiterated the grounds of the determination application. He submitted that the dealer proposes to start trading of item 'Cotton Stockinette/Fishnet-Fabric/Cotton Knitted Cloth' made from cotton cloth. He further stated that the item under consideration could be covered either by entry no. 10, 15 and 48 of Schedule I appended to the DVAT Act, 2004.

5. For convenience, the said entries have been reproduced below:-

Entry no. 10- *Cotton and silk yarn in hank and cone.*

Entry no. 15- *Fish net, fish fabrics & fish seeds, prawn/shrimp seeds.*

Entry no. 48- *Textile as described in the First Schedule to the Additional Duty on Excise (Goods of Special Importance) Act, 1957 before its omission by the Govt. of India to give effect to section 75 of the Finance Bill, 2011 but not including -*

(i) *bed-sheets, pillow covers and other made ups covered by HSN entry nos.63.01,63.02,63.03,63.04,63.05 and 63.06.*

(ii) *imported varieties of textiles.*

(iii) (a) *industrial textiles such as convass belt, filter cloth etc.*

(b) *furnishings having sale price of more than Rs. 100/- per meter or per piece or per set, as the case may be, other than handloom furnishings”.*

(c) *Suitings having sale price of more than Rs. 500/- per meter.*

6. The Departmental Representative stated that the entry no. 10 of Schedule I appended to DVAT Act, 2004 is related to cotton and silk yarn in hank and corn forms but the sample of the product under determination is not in hank or corn form but is a woven fabric. The Departmental Representative inquired about the HSN code and the origin of the product (to ascertain whether indigenously produced or imported) from the counsel of the dealer but the counsel expressed his inability to produce any purchase invoice indicating the HSN code of the product under determination. Further, the departmental representative pointed out that as per entry no. 15 of the Schedule I, fishnet and fish fabrics are two different items, but the dealer claims them as one item i.e. fishnet-fabric. The dealer could not explain the purpose clearly.

The departmental representative submitted the definitions of fishnets and fish fabric taken from the internet which is as under:

Fishnets *are a bag or other contrivance of strong thread or cord worked into an open, meshed fabric, for catching fish.*

Fish Fabric is a piece of meshed fabric designed to serve a specific purpose i.e. fishnets, tennis nets etc.

The sample of the dealer is textile fabric, which is neither fish-net nor fish fabric because the gaps in weaving are very narrow, whereas in the fishnet as well as in fish fabric the gaps in the cord/fabric are very large as compared to the sample given by the dealer. Further, for ascertaining whether any product in the name of fishnet-fabric, as claimed by the dealer, exists or not, the internet was searched by the departmental representative who produced a copy of image of fishnet-fabric which is actually a fishnet or raw material for preparing a fishnet. So, the product under determination cannot be used as fishnet. Hence, it is not covered by entry no. 15 of the Schedule I appended to the DVAT Act, 2004. For examination whether the product falls under entry no. 48 of the Schedule III of the said Act, the departmental representative produce the first Schedule to the Additional Duty on Excise (Goods of special importance) Act, 1957, but the product of the applicant does not find any place in the said schedule, hence, not covered by entry no. 48 of the Schedule I appended to DVAT Act, 2004. The departmental representative stated that the product falls under entry no. 164 of the Schedule III appended to the said Act which reads as under:-

“Entry no. 164- All other varieties of textile fabrics and made ups as are specifically not covered by any other entry of any of the Schedules to the Act.”

7. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and heard both the parties. After going through the various schedules appended to the said Act and Additional Duty on Excise (Goods of special importance) Act, 1957, I am of the considered view that the item under determination is a fabric covered under entry no. 164 of Schedule III appended to the Delhi Value Added Tax Act, 2004, hence taxable @5%. 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