

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

No.320/CDVAT/2012/Rectification/169

Dated: 21-6-13

Satish Electricals  
C-18/2, Wazirpur,  
Delhi-110052

**ORDER**

Present for the Applicant : Sh. Rakesh Garg, FCA & Sh. Vijay  
Gupta, FCA  
Present for the Department : Sh. T.C. Sharma, Departmental  
Representative

An application was filed by Sh. Anil Kumar Beri on 16.05.2012 under section 84 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") before this court to determine the following question: -

***“What would be the rate of tax applicable on Ferrous Alloys Resistance Wire commonly known as Ferrous based Resistance Alloy Wire, Electric Resistance Wire & Resistance Heating Wire?”***

2. The aforesaid application was disposed off vide order no. No.321/CDVAT/2012/58 dated 19.07.2012 extract of which is given below:-

“I am of the considered view that Ferrous Alloys Resistance Wire commonly known as Ferrous based Resistance Alloys Wire, Electric Resistance Wire & Electric Resistance heating wire is not covered by entry no. 28 of IIIrd Schedule of Delhi Value Added Tax Act, 2004 or any other entry of any other

schedule appended to the said Act and hence is an unspecified item taxable at the rate of 12.5%. It is determined accordingly.”

3. On being aggrieved by the aforesaid order, M/s Satish Electricals (herein after called “the applicant”) filed a rectification application on 06.08.2012 under the provisions of Sub-Section (5) of Section 74B of the Delhi Value Added Tax Act, 2004 in the prescribed Form DVAT 38C against the determination order in the case of Anil Kumar Beri. The applicant insisted that the ‘Resistance Wire’ should be classified under clause (xv) of Section 14 (iv) of the Central Sales Tax Act, 1956 as ‘goods of special importance in inter-state trade & commerce’. In his rectification application, the applicant has referred to the fact that the determination order passed in the case of ‘Anil Kumar Beri’ is directly affecting his trade.

4. In response to rectification application filed by the applicant, Sh. Rakesh Garg, counsel for the applicant, appeared on 08.08.2012 and reiterated the grounds of the rectification application stating that the item ‘Resistance Wire’ is covered by entry no. 24 of the Schedule III appended to the DVAT Act, 2004. Further, on 03.10.2012, the counsel filed additional submissions dated 27.09.2012, and all together changed his stand and claimed that the product ‘Resistance Wire’ can be considered as industrial input as specified under sub-entry no. 203 and 213 of entry no. 84 of Schedule III appended to the DVAT Act, 2004 or alternatively under entry no. 28 of the Schedule III appended to the DVAT Act, 2004. Brief details of his rectification application and additional submissions are as under: -

(a) The entry no. 24 of Schedule III of the DVAT Act, 2004 reads as under:-

**“Declared goods as specified in section 14 of the Central Sales Tax Act, 1956 but not including cereals, pulses, sugar, textiles, tobacco and Liquefied Petroleum Gas (LPG) for domestic use.”**

**Section 14 (iv) of the CST Act, 1956 reads as under:-**

*“Iron and steel, that is to say,-*

*(i) pig iron, sponge iron and cast iron including ingot moulds, bottom plates, iron scrap, cast scrap, cast iron scrap, runner scrap and iron skull scrap;*

*(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);*

*(iii) skelp bars, tin bars, sheet bars, hoe- bars and sleeper bars;*

*(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);*

*(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);*

*(vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition;*

*(vii) plates both plain and chequered in all qualities;*

*(viii) discs, rings, forgings and steel castings;*

***(ix) tool, alloy and special steels of any of the above categories;***

*(x) steel melting scrap in all forms including steel skull, turnings and borings;*

*(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;*

*(xii) tin- plates, both hot dipped and electrolytic and tinfree plates;*

*(xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails-- heavy and light crane rails;*

*(xiv) wheels, tyres, axles and wheel sets;*

***(xv) wire rods and wires-- rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;***

*(xvi) defectives, rejects, cuttings or end pieces of any of the above categories;”*

In his initial rectification application, he gave two reasons for inclusion of ‘Resistance Wire’ in the above said entry. These are as follows:-

- (i) Commissioner, Sales Tax, Delhi vide determination order JA 270/pacst/Misc/90 dated 10.08.1990 under section 49 of the

Delhi Sales Tax Act, 1975 had decided that 'Resistance Wires' would fall under the category of Ferro-alloys and, therefore, has to be classified as being covered by the definition under section 14 (iv) (xv) of the Central Sales Tax Act, 1956.

(ii) Resistance wire made of steel essentially falls within the scope of this entry, as held by the Hon'ble Calcutta High Court in the case of Daulat Electric Corporation *vs.* CTO (2009) 25 VST 352 on 19.01.2009.

In his written submission, he has further submitted that the Hon'ble Supreme Court of India in the case of 'Bansal Wire Industries Ltd. and another *vs.* State of U.P. and others' [2011] 42 VST 372 (SC) has not denied that steel wire falls within the scope of declared goods. The Apex Court has stated only that alloy steel and special steel are inapplicable to sub-clause (xv).

5. The Departmental Representative opposed the above submissions of the counsel for the dealer. He stated that in the determination order dated 10.08.1990, it was decided that 'if any alloy has almost 70-75% of a particular metal, it would be called as alloy of that metal and based on the chemical composition of these wires and the clarification given by the Ministry of Finance, it would be obvious that the 'Resistance Wire' would fall under the category of 'Ferro-alloys' and therefore, covered by the definition under section 14 (iv) (xv) of the Central Sales Tax Act, 1956.'

As regards the clarification given by the Ministry of Finance, referred above in the said determination order, the Departmental Representative produced a copy of letter from Dy. Controller of Imports and Exports dated 12.12.1990 issued by Ministry of Commerce regarding clarification for the import of Electric Resistance Alloy Wire Rods and according to the said letter the chemical composition of Electric Resistance Alloy Wire Rods is as under:

<b>Carbon</b>	:	<b>0.1% maximum</b>
Chromium	:	17.0% minimum
Aluminium	:	2.0% minimum
Silicon	:	1.5% maximum
Manganese	:	1.0% maximum
Phosphor	:	0.5% maximum
Sulphur	:	0.5% maximum
Iron	:	Balance

As per the chemical composition given in his determination application by Sh. Anil Kumar Beri, the carbon contents in the product under determination were **1.2% or less**, whereas as per the above referred clarification issued by the Ministry of commerce, the permissible maximum limit of carbon is **0.1%**. So, there is a huge difference between the carbon contents of the resistance wire, as clarified by the Ministry of Commerce and the product determined under the case of M/s Anil Kumar Beri. Hence, it is not covered by the above said clarification of the Ministry of Commerce, Government of India.

In Para 21 of the Calcutta High Court decision in the case of Dolat Electric Corporation and another vs. Commercial Tax Officer and Others, the above said determination order of the Commissioner, Sales Tax, Delhi dated 10.08.1990 had been referred. In the said order of the Calcutta High Court it was held that “wire rods and wires-rolled, drawn, galvanized, aluminized, tinned or coated such as by copper would be treated as declared goods. Resistance wire is made out of wire rods or wires rolled or even coated with copper treating it as a resistance. A sub-item cannot be constructed with the aid of another sub-item. In sub-items, we have to look into the main item. Therefore, stainless steel wire and stainless steel wire resistance are declared goods under section 14(iv) (xv) of the Central Sales Tax Act, 1956.”

But after the said decision of Calcutta High Court in the case of Dolat Electric Corporation and another vs. Commercial Tax Officer

and Others, the Hon'ble Supreme Court in its order dated 26.04.2011 has declared that 'wire of stainless steel' is not covered under section 14(iv) (xv) of Central Sales Tax Act, 1956 vide order no. (2011) 42 VST 372 (SC) in the case of Bansal Wire Industry and ors vs. State of U.P. The relevant para of the aforesaid decision is as under:-

***“Para 40-** Therefore , the findings and the decision arrived by the High court that stainless steel wire is not covered under the entry of “tools , alloys and special steel” in entry no. (ix) and, therefore, does not fall under “iron and steel” as defined under section 14 (iv) of the Central Act have to be upheld. Hence, the said commodity cannot be treated as a declared commodity under section 14 of the Central Act and the provision of section 15 of the Central Act does not apply to the facts of the present appeals.”*

The departmental representative stated that the above findings of the apex court are very clear, and hence, the interpretation of the applicant as regards of the above case is factually incorrect.

6. As regards the additional submission dated 27.09.2012 given on dated 03.10.2012, the departmental representative stated that during the course of hearings, the applicant has changed his stand taken in the rectification application dated 06.08.2012. As the said submissions of the applicant are different so, fresh application under section 74B of the DVAT Act, 2004 should have been submitted by the applicant. The brief details of the additional submission are as under:-

- (a) The counsel claimed that the product falls within the scope of entry no. 28 of Schedule III of the DVAT Act, 2004 which reads as under: -

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

He referred to entries of some other states and in particular referred to the entry no. 48 and entry no. 76, of Schedule II

appended to the U.P. VAT Act and entry no. 56 of Schedule C of the Haryana VAT Act. In support of his contention, he also filed a copy of clarification given under section 56 (3) of the Haryana Value Added Tax Act, 2003.

(b) He further referred to the sub entry no. (203) and (213) of entry no. 84 of the Schedule III of the DVAT Act, 2004 which have been reproduced below:

**“(203) - Mild Steel Sheets”**

**“(213) - Stainless steel but not including finished goods thereof” (sub-heading 7301 of Central Excise Tariff)**

In his contention, he stated that ‘Resistance Wire’ by itself is an industrial input and is used in Electrical Industry for manufacture in household appliances, e.g. geysers, heaters, heating-rods, industrial furnaces and far-infrared devices. ‘Resistance Wire’ cannot be called as finished product since it has no use for non-industrial consumers.

7. The Departmental Representative stated that entry no. 48 and entry no. 76, of Schedule II appended to the U.P. VAT Act and entry no. 56 of Schedule C of the Haryana VAT Act referred to by the applicant in his application are apparently different from the entry no. 28 of the Schedule III appended to the DVAT Act, 2004. The clarification given under section 56 (3) of the Haryana Value Added Tax Act, 2003 is based on the ‘Explanation’ given at the end of the entry no. 56 contained in Schedule C of the HVAT Act, 2003. So, the item of the dealer is not covered under entry no. 28 of the Schedule III of the DVAT Act, 2004.

As regards the claim of the dealer that the item is covered by 84 (203) & 84 (213) of Schedule III of the DVAT Act, 2004, the departmental representative stated that as per the Spectro Test Report conducted by Gaur Spectro Lab, Wazirpur Industrial Area, New Delhi

and submitted by the applicant, the item is stated to be a Ferrous based Resistance Wire. It has been declared that it is not a stainless steel wire. Further, as per report submitted by the applicant and the earlier applicant M/s Anil Kumar Beri, the Excise Tariff Code under which Electric Resistance Wire and Electric Resistance Heating Wire imported is covered under Tariff no. 7223 0091, 7223 0092, 7223 0093 and when declared Electric Resistance Wire (including Electrical Resistance Heating Wire), it is covered under tariff no. 7229 9060, whereas the sub-entry no. 213 of entry no. 84 of Schedule III appended to the DVAT Act, 2004, covers only excise code 7301.

Further, the departmental representative stated that as per the definition given at the website [www.businessdictionary.com](http://www.businessdictionary.com) the “mild steel is an iron-carbon alloy containing less than 0.25% carbon which makes it more ductile and less hard thus rendering it unsuitable for structural work”. As the item of the dealer contains 1.2% or less carbon, so, keeping in view the definition of mild steel, the item of the dealer is not covered under the entry 84 (203) of Schedule III appended to the DVAT Act, 2004.

The departmental representative stated that while determining such products, it is relevant to refer to the relevant Para of the Supreme Court decision in the case of Bansal Wire Industry wherein the apex court has held that when one commercial commodity is, by manufacturing process, etc., transformed into another, it becomes a separate commodity for sales tax purposes. If iron bars were drawn into “wire”, such wire shall be a different taxable commodity.

*The relevant para of the apex court decision has been reproduced below:*

**“Para 33** – *It is thus clear, that if the object of the newly substituted clause (iv) of section 14 of the Central Act was to make iron and steel taxable as one substance, the item could have “goods of iron and steel” or, to be more clear, “iron and*



*steel” irrespective of change of form or shape or character of goods made out of them”. The more natural meaning, therefore is that each item specified in section 14 (iv) forms a separate species for each series of sales. **When one commercial commodity is, by manufacturing process, etc., transformed into another, it becomes a separate commodity for sales tax purposes. If iron bars were drawn into “wire”, such wire shall be a different taxable commodity”.***

8. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and the decision made therein. Also perused the grounds of review/rectification application, various Schedules appended to the DVAT Act and have heard both the parties. I am of the considered view that the “Ferrous Alloy Wire” Ferrous based Resistance alloy wire, Electric Resistance Wire and Electric Resistance Heating Wire-all made of Ferrous, non-Ferrous alloys containing chromium, aluminium, carbon, sulphur, silicon, phosphorous and iron, are not covered either by the items specified under entry no. 24, entry no. 28 and entry no. 84 of Schedule III of Delhi Value Added Tax Act, 2004 or by any items specified in various schedules. Hence, the review/rectification application of the dealer is rejected. Held accordingly.

**(Prashant Goyal)  
Commissioner, VAT**

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Joint Commissioner (System)
4. Value Added Tax Officer (Policy Branch)
5. President, Sales Tax Bar Association (Regd.)
6. Guard File

**(Prashant Goyal)  
Commissioner, VAT**