

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

No.328/CDVAT/2013/Review/166

Dated: 13-6-2013

Hathkargha Laghu Patang
Udyog Samiti (Regd.), 1902,
Bazar Lal Kuan, Delhi-110006

ORDER

Present for the Applicant : Sh. R.S. Negi, Advocate
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

The above named applicant has filed an application under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") before this court on 10/01/2013 to determine the following question: -

"Whether Patang Charkhi, Patang Dor & Patang Manjha are exempted from Tax under DVAT Act, 2004?"

2. The aforesaid application was disposed off vide order no. No.328/CDVAT/2013/104 dated 25.04.2013 extract of which is given below: -

" I am of the considered view that items Patang Dor, Patang Manjha and Patang Charkhi are not covered by any other entry of any other schedule appended to the said Act and hence are unspecified items under section (4) (1) (e) of the DVAT Act, 2004 and taxable @12.5%. Held accordingly."

3. On being aggrieved by the aforesaid order, the applicant filed a review application on 15.05.2013 under the provisions of Sub-Section 3 of Section 74B of the Delhi Value Added Tax Act, 2004 in the prescribed Form DVAT 38C on the grounds that in the Delhi Budget, 2013-14, the

items i.e. Patang Charkhi, Patang Dor and Patang Manjha have been exempted from levy of VAT w.e.f. 01.04.2013 whereas the said determination order dated 25.04.2013 determines the rate of tax as 12.5% on these items. So, there is confusion in the Trade Circles with regard to rate of tax applicable on these items during the period w.e.f. 01.04.2013 to 25.04.2013.

4. In response to review application filed by the applicant, a notice was issued on 17.05.2013 to the applicant, to present his case on 29.05.2013. Sh. R.S. Negi, Counsel for the applicant appeared and reiterated the grounds of the review application.
5. The Departmental Representative stated that the present determination order requires no rectification, because as per the DVAT Act, 2004 as soon as the Government amends an entry of a Schedule, the rate of tax on that specific item shall be governed by the said Schedule rate and not by the date of determination order which is issued keeping in view the rate of tax applicable on the date of application under section 84 of the DVAT Act, 2004.

Hence, in this case, the items Charkhi and Manjha for flying kites were brought under Schedule I of DVAT Act, 2004 with effect from 01.04.2013. So, out of items Patang Dor, Patang Manjha and Patang Charkhi, the above said two items shall be exempted from levy of VAT from the said date and there is no change in rate of tax in respect of Patang Dor.

6. 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 application and heard both the parties. The instant case was kept for order on 13.02.2013 and the determination order was passed on 25.04.2013. However, the Government brought Charkhi and Manjha for flying kites under Schedule I of the DVAT Act, 2004 with effect from 01.04.2013, thereby exempting these two items

from levy of VAT, but the Patang Dor continues to be an unspecified item. So, the order no. 328/CDVAT/2013/104 dated 25.04.2013 is reviewed the above extent and the decision after review is as under: -

“I am of the considered view that up to 31.03.2013, Patang Charkhi, Patang Dor and Patang Manjha being unspecified items were taxable @ 12.5%. Further, with effect from 01.04.2013, the item Charkhi and Manjha for flying kites were brought under Schedule I of the said Act by the Government, so, from the above said date both these items became exempted from levy of VAT under Delhi Value Added Tax Act, 2004. The Patang Dor was an unspecified item and continues to be an unspecified item even after 01.04.2013 under section 4 (1) (e) of the DVAT Act, 2004 hence, taxable @12.5%. Held Accordingly.”

(Prashant Goyal)
Commissioner, VAT

No.328/CDVAT/2013/Review/166

Dated: 13-6-2013

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