

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

No.327/CDVAT/2012/ 154

Dated: 23-5-2013

Mitarth India Ltd.,  
Shop No. A-7, Mangol Puri  
Industrial Area, Phase-II,  
New Delhi-110051

**ORDER**

Present for the Applicant : Sh. S.K. Singhal, CA  
Present for the Department : Sh. T.C. Sharma, Departmental  
Representative

The above named applicant filed an application on 20/12/2012 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: -

***“What is the rate of tax on item ‘Cellular/Celuka PVC Foam boards’ made from PVC and Calcium as major ingredients along with other chemicals under Delhi Value Added Tax Act, 2004?”***

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. 217264 dated 09.10.2012.
3. Mitarth India Ltd. is a registered dealer of this department having TIN 07760272818. The Product manufactured by the dealer comprises of PVC, Calcium and chemicals (Foaming agent, processing aid and foam regulator). Further, this product is manufactured by using extrusion process. The Product ‘Cellular/Celuka PVC Foam boards’ is produced in different sizes for different uses such as flex boards for advertisement, sign board for display/advertisement purpose and in furniture and fixtures.

4. Sh. S.K. Singhal, Counsel of the applicant appeared and reiterated the grounds of the determination application. The Counsel submitted that the product manufactured by them is cellular sheet made of PVC compound; it finds its place under entry no. 84 (205) of Schedule III of the DVAT Act, 2004. Further, he submitted that composition of product manufactured by the dealer also falls under Chapter 39 of the Tariff and H.S.N. Code is 3921 12 00 (other plates, sheets, film, foil and strips of Plastic- cellular of polymers of Vinyl Chloride).
5. The DR for the revenue stated that entry no. 41A & 84 of the III Schedule of the said Act cannot be read in isolation as these entries are governed by the notes as mentioned against the relevant entry under the Central Excise Tariff Act, 1985 and also notes appended to these two entries of the DVAT Act, 2004. The relevant notes of DVAT Act in respect of entry no. 41A & 84 of the Schedule III of the said Act which are common for both these entries have been reproduced as under:-

**Note:-(1)** *The Rules for the interpretation of the provisions of the Central Excise Tariff Act, 1985 read with the Explanatory Notes as updated from time to time published by the Customs Co-operation Council, Brussels apply for the interpretation of this entry and the entry number 84 of this Schedule.*

**Note:- (2)** *Where any commodities are described against any heading or, as the case may be, sub-heading, and the description in this entry and in entry number 84 is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then, only those commodities described in this entry and in the entry number 84 will be covered by the scope of this notification and other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.*

**Note:-(3)** *Subject to Note (2), for the purpose of any entry contained in this notification, wherein the description against any heading or, as the case may be, sub heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purposes of the said Tariff under that heading or sub-heading will be covered by the scope of this notification.*

**Note:-(4)** *where the description against any heading or sub-heading is shown as "other", then, the interpretation as provided in Note 2 shall apply.*

6. For the purposes of examining as to whether the item under determination is covered by both the Acts i.e. DVAT Act, 2004 and Central Excise Tariff Act, 1985, it must satisfy the condition of matching the entry in both these Act as given at note (3) or covered only under DVAT Act, 2004 as it falls in the above note (2) & (4). The relevant part of entry no. 84 and its sub-entry 205 of schedule III appended to the DVAT Act, 2004 have been reproduced for examining the product on the above mentioned conditions laid down in DVAT Act, 2004: -

**Entry no. 84- Industrial Inputs....**

Serial No.	Description	Central Excise Tariff Heading
(1)	(2)	(3)
205	Micro cellular Sheets, Banwar Sheets & Hawai Straps.	None

The HSN Code of the item under Central Excise Tariff Act, 1985 referred by the applicant reads as under: -

Chapter : 39	Plastics and articles thereof
Heading : 3921	Other plates, sheets, film, foil and strip, of plastics
Sub-heading : 3921 12 00	Of polymers of vinyl chloride

7. The Departmental Representative stated that on comparing the above two entries it is seen that the entry no. 84 (205) of Schedule III appended to the DVAT Act, 2004 differs from HSN code 3921 12 00 of the Central Excise Tariff Act, 1985, so rule as detailed out in note (2) given at the end of entry no. 84 of Schedule III of the DVAT Act, 2004 shall prevail and the HSN entry and its sub-heading will not play any part in deciding the product. He further stated that the item i.e. 'Cellular/Celuka PVC Foam Boards' is not covered in sub-entry 205 of entry no. 84 of Schedule III appended to the DVAT Act, 2004 and therefore, it is an unspecified item.
8. 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 have gone through the entry no. 41A and 84 of Schedule III of DVAT Act, 2004 and notes appended to these entries. Besides, the relevant HSN entry and notes of the Central Excise Tariff Act, 1985 have also been perused. I am of the considered

view that the item 'Cellular/Celuka PVC Foam Boards' is not covered by entry no. 84 of Schedule III or any other entry of the Schedules of DVAT Act, 2004 and is general unspecified item falling under section 4 (1) (e) of Delhi Value Added Tax Act, 2004 and shall attract tax @12.5%. 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**