

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

No.329/CDVAT/2013/155

Dated: 28.05.2013

M/s Cemex Technologies,
6/30a, G/F (F/P), Jangpura-B,
New Delhi-110051

ORDER

Present for the Applicant : Sh. Rakesh Sharma, Counsel
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

The above named applicant filed an application on 08/02/2013 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: -

“What is the rate of tax on item ‘Finger Print Time Attendance’ and ‘Finger Print Access Control System’ imported from abroad and sold in Delhi and in other states of India 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. 202042 dated 13.12.2012.
3. M/s Cemex Technologies is a newly registered dealer having TIN. 07030459023. The Firm imports items/goods i.e. ‘Finger Print Time Attendance’ and ‘Finger Print Access Control System’ from abroad under Excise code no. 85437099 and sells them in Delhi and other states of India.
4. Sh. Rakesh Sharma, Counsel of the applicant appeared and reiterated the grounds of the determination application. He submitted that the items under determination can be covered under sub-entry 26) of entry no. 41A of

Schedule III of the DVAT Act, 2004. He contended that these items are similar to the items mentioned in entry relating to 'IT Products' and are rather advance version of the products which are now available with latest technology i.e. radio frequency identification card systems (RFID card system) and bio-metrics systems.

5. The DR for the revenue stated that entry no. 41A & 84 of the Schedule III 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. In case the description given in DVAT entry is different from the description given in Central Excise Tariff Act, 1985, then the entry as mentioned in Schedule III of the DVAT Act, 2004 shall prevail. 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 items 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. 41A along with sub-entry (26) of Schedule III appended to the DVAT Act, 2004 have been reproduced for examining whether the products under determination fulfill the above mentioned conditions as laid down in DVAT Act, 2004:-

Entry no. 41A- Information Technology products as per the description in column (2) below, as covered under the headings, or sub-heading mentioned in column (3), as the case may be, of the Central Excise Tariff Act, 1958 (5 of 1986).

Serial No.	Description	Central Excise Tariff Heading
(1)	(2)	(3)
26	Signal generators and parts thereof.	8543

7. The relevant entry as covered under the heading or subheading mentioned in (3) as the case may be, of the central excise tariff Act, 1985 (5 of 1986) has been reproduced below:-

8543	Electricals machines and apparatus having individual functions, not specified or included elsewhere in this chapter
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8. The Departmental Representative stated that on comparing the sub-entry (26) of entry 41A of the Schedule III appended to the DVAT Act, 2004 with the entry of same HSN code in the Central Excise Tariff Act, 1985, it is seen that the description of the sub-entry (26) of entry no. 41A of Schedule III appended to the DVAT Act, 2004 differs from entry having HSN code (8543) of the Central Excise Tariff Act, 1985, so as detailed out in note (2) given at the end of entry no. 41A 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 items i.e. 'Finger Print Time Attendance' and 'Finger Print Access Control System' are not covered in entry no. 41A of Schedule III appended to the DVAT Act, 2004 and therefore, are unspecified items.

9. 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 of Schedule III of DVAT Act, 2004 and notes appended to the said entry. 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 items 'Finger Print Time Attendance' and 'Finger Print Access Control System' are not covered by entry no. 41A of Schedule III or any other entry of the Schedules of DVAT Act, 2004 and accordingly, 'Finger Print Time Attendance' and 'Finger Print Access Control System' are unspecified items 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

No.329/CDVAT/2013/155

Dated: 28.05.2013

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