

OFFICE OF THE EXCISE & TAXATION COMMISSIONER, PUNJAB.

To

M/s DCM Engineering Ltd.
TIN No. 03211143616.
Village Asron near ropar head works, Ropar

Memo No. VAT-3-2015/ *sh-I*
Patiala, dated: *12/6/15*

Subject:- Application U/s 85 of the Pb. VAT Act, 2005 for determination of disputed question.

Memorandum

Please refer to your letter No.-nil dt.27-04-15 on subject cited.

An attested copy of orders dated 05-06-15 passed by Excise & Taxation Commissioner, Punjab is enclosed herewith.

Kesal
10/6/15
Superintendent (VAT)
For Excise & Taxation Commissioner, Punjab.

Before Anurag Verma IAS, Excise & Taxation Commissioner, Punjab.

Name of the Applicant M/s. DCM Engineering Ltd.
Subject Application u/s 85 of the PVAT Act, 2005

ORDER

The applicant has submitted that:-

"We DCM Engineering Ltd, Asron (Punjab) are engaged in the manufacture of iron casting falling under chapter 73 of the first schedule to the Central Excise Tariff Act 1985.

The Castings so manufactured are sold to various industries outside the state of Punjab as well as within the state of Punjab. On interstate sales castings are sold to registered dealers by charging CST @ 2% against form C.

In case of Local sale, There are two regulations under sales Tax to charge VAT on Castings:-

1. Charging Vat @ 6.05% (Basic Rate 5.5%) + 10% surcharge on the same) on the basis of entry 70 of Schedule B of Punjab VAT Act, 2005.
2. Charging VAT@ 2.75% (Basic Rate 2.5%+10% surcharge on the same) on the Basis of Notification dated 25 Jan 2014 under which Punjab Govt. had reduced the rate of iron & Steel product covered under section 14 (IV) (I) of CST Act the declared goods are falling in schedule E of Punjab VAT Act, 2005. This VAT rate has further been amended and w.e.f. 11.03.2015 (Basic Rate 3.5% +10% surcharge) on the same.

in view of amendment in schedule E, as mentioned in (2) above, some of our customers in the State of Punjab who are engaged in the manufacture of Tax Free goods (Tractor) are pressing use hard to charge VAT on casting as per schedule E, meant for declared goods as no input credit is available to these customers. It has also been noticed that some of manufacturers in the state of Punjab are already charging VAT on machined Iron casting @ 2.75 % which has been further amended to 3.85% (inclusive of surcharge) effective from 11.03.2015.

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10/6/15
Superintendent Grade-II
O/o Excise & Taxation Commissioner

However, in the absence of clarification, we are continuing to charge and paying Vat. @ 6.05% (Basic 5.5% + 10 % surcharge) on the same. We also draw your kind attention to the decision of Hon'ble Supreme Court in the case of Vasantham Foundry V/S Union of India 1995 SCC (5) 289, wherein it was held that, Cast Iron casting in its primary and rough form must be held Cast Iron. (Copy enclosed)."

The Applicant has then sought clarification on whether castings produced and sold by us are covered under schedule E of the Punjab Value Added Tax Act, 2005 as declared goods."

The Applicant Co. has submitted that it is engaged in manufacture of iron casting falling under chapter 73 of the first schedule to the Central Excise Tariff Act 1985.

The Applicant has suggested that its products may be classified as falling under section 14 (iv) (i) of the Central Sales Tax Act, 1956 i.e.

"pig iron, (sponge iron) and cast iron including (ingot moulds, bottom plates), iron scrap, cast iron scrap, runner scrap and iron skull scrap.

Whereas in the principal application, the applicant co has submitted that it is manufacturing iron casting falling under chapter 73, in the subject i.e. Sub:- defining the application it has asked for clarification on rate of VAT on unmachined iron casting under Punjab Value Added Tax Act, 2005". There is thus ambiguity in the contents of the application inasmuch as the products of the applicant have been alternately attempted to be defined in the application as

" Iron casting falling under chapter 73 of the first schedule to the central Excise Tariff Act 1985" on the one hand and "unmachined iron casting "on the other.

The Hon'ble Supreme Court in Bengal Iron Corporation and Another v/s CTO & others 1993 AIR 2414 has clearly held that.

" Cast iron casting manufactured by the appellant do not fall within the expression ' cast iron' in entry 2 (i) of the Third schedule of the

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Andhra Pradesh General Sales Tax Act or within section 14 (iv) (i) of the Central Sales Tax Act.

In the subsequent judgment of the Hon'ble Supreme Court referred to by the applicant namely, Vasantham Foundry v/s Union of India and others reported as 1995-99 STC 87 (SC), it was held that when machining or polishing was done on the cast iron then it would no longer be a declared good u/s 14 of the CST.

The Applicant Co. has in its application submitted a process flow chart wherein it is stated that after the raw castings are taken out of the Mould boxes then they are subjected to

- . Cleaning through shot blasting;
- . Welding;
- . Grinding;
- . Painting;

He has further elaborated in the process flow chart that the raw castings are transferred to the Fettling Shop where the raw castings are placed in the Shot Blasting machine for cleaning. Thereafter the castings are subjected to grinding by a Grinding Machine and welded as required. In the words of the applicant.

"The castings are grinded for smoothing surface, welded to fill up the holes (if any) with the help of welding electrodes".

Finally as per process flow chart of the applicant, the products are shifted to the Painting Booth for painting and then after final inspection, the products are dispatched to OEMs.

It is thus amply clear that the raw castings after being removed from the moulds are subjected to multiple processes of cleaning through shot blasting, welding, grinding and painting. It is quite obvious that after such elaborate processes, a final product, ready for use by manufacturers including tractor manufacturers (the applicant has not specified whether its

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O/o Excise & Taxation Commissioner

products are used by manufacturers of others automobiles) is produced. In the judgment of the Apex court referred to by the applicant, in Para 25, it was held:-

"Therefore, in our view "cast iron casting" in its basic or rough form must be held to be ' cast iron. But , if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, manhole covers or bends, these cannot be regarded as " cast iron casting". Such products cannot be regarded as ' cast iron ' and cannot be treated as "declared goods" under Section 14 (iv) of the Central Sales Tax Act. This view is not in conflict with the view taken in the case of *Bengal Iron Corpn.*' but it is in consonance with the decision in that case."

It is obvious from the facts that multiple processes are visited upon the raw casting by the applicant whereafter the final products (whose specific nomenclatures have not been elaborated by the applicant) are derived and dispatched to the customers. In view of the elaborate processes to which the castings are subjected to by the applicant it can by no stretch of imagination be considered that the applicants' products fall under Declared goods as defined in the Central Sales Tax Act. The applicant is thus rightly charging tax @ 5.5 % + surcharge on its products falling under chapter 73 of the first schedule to the Central Excise Tariff Act, 1985 as they are covered under the entry " Metal castings" i.e. entry No. 70 of schedule B appended to the Punjab Value Added Tax Act, 2005. It is clarified that only the products falling under chapter 73 of the first schedule to the Central Excise Tariff Act, 1985 are clarified to be falling under Entry No. 70 of schedule B and this determination would not effect taxability of items falling under any other schedule to the Central Excise Tariff Act 1985.

The question is determined accordingly.

Date: 05.06.2015
Place: Chandigarh

(Anurag Verma IAS)
Excise & Taxation Commissioner
Punjab

✓ Affected
Kesava
10/6/15
Superintendent Grade-I
O/o Excise & Taxation Commissioner
Punjab, Patiala