

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

No: 244/CDVAT/2009/10

Dated: 04.09.2009

**M/s STP Limited
14-15, 3rd Floor,
Farm Bhawan,
Nehru Place, N. Delhi**

ORDER

Present for the Applicant : S/Sh. Balram Sangal & Sudhir Sangal
Present for the Department : Shri T.C. Sharma, DR.

The above named applicant has filed an application on 16/6/09 under Section 84 of DVAT Act, 2004 (hereinafter referred to as the "said Act"). The question put up before this Court for determination under the aforesaid provision of this law is as under:

“Whether APP modified waterproofing membrane falls within the ambit of entry 4 of Schedule III of DVAT Act, 2004 and chargeable to VAT @ 4%.”

2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs. 500/- has been paid through Draft No. 209380 dated 15-06-2009.
3. The facts are that the applicant company is engaged in the business of manufacturing Bituminous product, water proofing felt and construction chemicals. Besides it the applicant Company is also importing Atactic Polyproylene (APP) modified water proofing Membrane. Membrane is a thin pliable sheet.
4. The Counsel who appeared on behalf of the applicant reiterated the grounds of the application of determination. He argued that APP modified waterproofing membrane falls within the meaning of 'Asphatic Roofing' of Entry 4 of III Schedule of DVAT Act, 2004.
5. The D.R. appeared on behalf of the department clarified that the Entry No. 4 in III Schedule of DVAT Act, 2004 is about all kinds of bricks. Whereas the items under determination is neither brick nor a tile. A mere reading of the entry confirms that the said entry is about bricks of all kinds and includes two types of brick viz. ash bricks and refractory bricks besides one type of tiles called earthen tiles also known as 'Khaprail' in Hindi which are half round tiles and used on roofs, but, before pavement of these earthen tiles it is necessary to spread asphalt. So 'asphaltic roofing' should not be read in the isolation, more precisely it explains the procedure adopted for paving roofing with the said earthen tiles.
6. Further the D.R. stated that the item under determination is an imported product called Atactic Polyproylene (APP) modified proof membrane is a thin pliable sheet supplied in rolls ranging in thickness from 3mm to 5mm is:-
 - (i) a multilayered design consisting of a 150 / 160 / 180 gsm Polyester / Fiberglass sheet as a centre core.
 - (ii) Polyester / Fiberglass sheet coated on both side with APP modified bitumen (Asphalt) and finally finished with thermofusible polyethelenene film on both side.
 - (iii) It is used in waterproofing the roof of the building and is affixed by torch wetting on RCC casted roofs.

As such the nomenclature of the product is different and new to the Indian Market, and not covered by any Entry of the Schedule including Entry No. 4 of Schedule III of DVAT Act, 2004. It is, therefore, an unspecified item and taxable @ 12.5% under the Act.

7. I have perused in detail the application filed u/s 84 of the Act, written submission filed by the Counsel for the applicant and also heard the Counsel for the applicant and departmental representative. I have also gone through the entry No. 4 of IIIrd Schedule of DVAT Act, 2004. I am of the considered view that the item APP Modified Waterproofing Membrane is not covered by Entry No. 4 of III Schedule or any other Entry of the Schedules of DVAT Act, 2004 and this is a general unspecified item falling u/s 4 (1)(e) of DVAT Act, 2004 and attracting VAT @ 12.5%. It is held and determined accordingly.
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