

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

Before Sri Binod Kumar, I.A.S., Commissioner, Sales Tax, West Bengal

In the matter of :

An application filed under section 102 of West Bengal Value Added Tax Act, 2003, read with rule 202 of the West Bengal Value Added Tax Rules, 2005.

- And -

In the matter of :

Case No: 24X/PRO/VAT/15/273

- And -

In the matter of :

M/s B.B. Styro Extrusion Pvt. Ltd., carrying on business under the same trade name at 8, Camac Street, Shantiniketan Building, 6th Floor, Room No. 8, Kolkata-700017

Present for the applicant: Sri J.S. Mehta, Authorised Advocate and
Sri Krishan Goyal, Director of the applicant Company.

Sri Adesh Kumar, Additional Commissioner, Commercial Taxes/Sales Tax,
and Public Relations Officer (PRO) of the Directorate of Commercial Taxes,
was also present to assist in the matter

Date of order: 15.03.2016

This is an application filed by M/s B.B. Styro Extrusion Pvt. Ltd., through Sri Krishan Goyal, Director, hereinafter referred to as applicant, under section 102 of the West Bengal Value Added Tax Act, 2003, hereinafter referred to as the VAT Act. The applicant holds VAT Registration/ TIN No. 19434259043 and has raised a question for determination of rate of tax applicable to the sale of Expandable Polyethylene Sheets and rolls.

The applicant has duly affirmed that the dispute has not arisen out of any order passed by any authority and that he has not filed any application before any Court, Tribunal, Board or any authority under the VAT Act, praying for determination of a dispute of similar nature referred to in this application.

Sri Krishan Goyal, Director of the applicant Company, submitted that Expandable Polyethylene Sheet is manufactured through a process where minute quantity of liquefied petroleum gas reacts chemically with polyethylene forming micro-bubbles. Due to chemical reaction micro-bubbles are formed expanding polyethylene and making it spongy and ideal for use in packing of goods. Sri Goyal added that the thickness of sheet can be increased by sticking together more than one layers and it is sold both in straight length as well as in rolled forms.

Sri J.S. Mehta, Advocate, submitted that Expandable Polyethylene Sheets comes under the broad category of plastics and falls under Heading No. 3920 of the Central Excise Tariff Act, 1985, and is specifically covered under heading 3920 10 19 under sub-heading 'Other'. Sri Mehta submitted further that the item in question should fall under item mentioned against serial No. 154 of Part III of Schedule C of the West Bengal Value Added Tax Act, 2003, as it is neither cellular nor reinforced, laminated, supported or combined with other materials. Sri Mehta added that structure of Expandable Polyethylene is not cellular and its impact absorbing capacity comes from numerous and random micro-bubbles formed due to chemical reaction during the course of its manufacture, making it ideal for use in industrial packing. He further submitted that micro-cellular sheets are enumerated separately along with banwar sheets under serial No. 185 of Part III of Schedule C.

Sri Mehta also drew my attention to Note Nos. 2 and 5 given for interpretation at the end of Part III of Schedule C, which are as under:

Note 2.— The rules for the interpretation 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, shall apply for the interpretation of this Part.

Note 5.— Where the description against any heading or sub-heading is shown as "other" then the interpretation as provided in Note 2 shall apply.

Sri Adesh Kumar, PRO, stated that entry at serial No. 154 of Part III of Schedule C of the VAT Act is as under:

Serial No.	Heading No. of the Central Excise Tariff Act, 1985 (5 of 1986)	Sub-heading No. of the Central Excise Tariff Act, 1985 (5 of 1986)	Description
154.	39.20		Other Plates, sheets, film, foil, and strip of plastics, non-cellular, whether lacquered or

			metallised or laminated, supported or similarly combined with other materials or not.
--	--	--	---

Whereas, Tariff Item under heading No. 3920 of the Central Excise Tariff Act, 1985 (5 of 1986) and items under subheadings read as under:

Tariff Item Description of Goods

3920 OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS, NON-CELLULAR AND NOT REINFORCED, LAMINATED, SUPPORTED OR SIMILARLY COMBINED WITH OTHER MATERIALS

3920 10 Of polymers of ethylene:

---- Sheets of polyethylene:

3920 10 11 Rigid, plain

3920 10 12 Flexible, plain

3920 10 19 **Other**

Further, Notes given in Chapter 39 of the Central Excise Tariff Act for interpreting Sub-Heading are as under:

SUB-HEADING NOTES

1. Within any one heading of this Chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions:

(a) where there is a sub-heading named "Other" in the same series:

- (1) the designation in a sub-heading of a polymer by the prefix "poly" (for example, polyethylene and polyamide -6.6) means that the constituent monomer unit or monomer units of the named polymer taken together must contribute 95% or more by weight of the total polymer content;
- (2) the copolymers named in sub-headings 3901 30, 3903 20, 3903 30 and 3904 30 are to be classified in those sub-headings, provided that the comonomer units of the named copolymers contribute 95% or more by weight of the total polymer content;
- (3) chemically modified polymer are to be classified in the sub-heading named "Other", provided that the chemically modified polymers are not more specifically covered by any other sub-heading;
- (4) polymers not meeting (1), (2) or (3) above, are to be classified in the sub-heading, among the remaining sub-headings in the series, covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same sub-heading shall be taken together. Only the constituent comonomer units of the polymers in the series of sub-headings under consideration are to be compared;

(b) where there is no sub-heading named "Other" in the same series:

- (1) polymers are to be classified in the sub-heading covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same sub-heading shall be taken

together. Only the constituent comonomer units of the polymers in the series under consideration are to be compared;

- (2) chemically modified polymers are to be classified in the sub-heading appropriate to the unmodified polymer. Polymer blends are to be classified in the same sub-heading as polymers of the same monomer units in the same proportions.

2.....

The matter is examined and items enumerated under Part III of Schedule C of the VAT Act and entries under Chapter 39 of the Central Excise Tariff Act, 1985, related to polyethylene, are perused in the light of submissions made before me.

In view of the Note Nos. 1 and 3 under Chapter 39 of the Central Excise Tariff Act for interpreting Sub-Heading Notes (underlined on pre-page) read with notes for interpretation mentioned at serial Nos. 2 and 5 under Part III appended to Schedule C of the West Bengal Value Added Tax Act, 2003, Expanded Polyethylene Sheets, both in straight lengths and in rolls, are held to be covered under entry at serial No. 154 of Part III of Schedule C and sales thereof in West Bengal is held to be taxable at the rate of 5 % under section 16(2)(b)(ii) of the West Bengal Value Added Tax Act, 2003.

Application filed under section 102 in the instant case stands disposed of as above.
Inform the applicant accordingly.

Application filed under section 102 in the instant case stands disposed of as above.
Send a copy of this order to the applicant for information.

Sd/-15/3/2016
(Binod Kumar)
Commissioner,
Sales Tax, West Bengal