

From Excise & Taxation Commissioner,
Haryana, Panchkula.

To All the Dy. Excise & Taxation Commissioners (ST),
in the State of Haryana.

Memo No. 178/ST-I,
Panchkula, dated the 12/11/14

Subject: Regarding circulation of Clarification in the case of M/s Paramount Iron & Steel Works (P) Ltd., Sonapat.

MEMORANDUM

A copy of clarification order issued by the Additional Chief Secretary to Government, Haryana, Excise & Taxation Department under section 56(3) of Haryana Value Added Tax Act, 2003 sought by M/s Paramount Iron & Steel Works (P) Ltd., M-17A, Industrial Area, Sonapat holding TIN-06883007926 is sent herewith for information and necessary action by all the concerned.

Ram Raj 11-11-14
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

Endst. No. 1782 / ST-I, Panchkula, dated the 12/11/14

A copy alongwith a copy of clarification is forwarded to the following for information and necessary action:-

- Regd.
1. M/s Paramount Iron & Steel Works (P) Ltd., M-17A, Industrial Area, Sonapat.
 2. All Jt. Excise & Taxation Commissioners (Division/Range) in the State of Haryana.
 3. All Joint Excise & Taxation Commissioners (Appeals) in the State of Haryana.
 4. Senior Deputy Accountant General (Audit), Haryana, Chandigarh.
 5. Dy. Excise & Taxation Commissioner (Vigilance), Haryana Vigilance Bureau, Sector-6, Panchkula.

Ram Raj 11-11-14
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

Endst. No. 1783 / ST-I, Panchkula, dated the 12/11/14

A copy alongwith a copy of clarification is forwarded to the following in the Head Office for information and necessary action:-

1. All Addl. Excise and Taxation Commissioners
2. Jt. Excise and Taxation Commissioners
3. Jt. Director (L)-I and II
4. Dy. Excise and Taxation Commissioners
5. DA-I and II
6. DDA-I & II
7. Superintendent (C) for sending E-mail to all the DETCs(ST) and for uploading on website.
8. ST-II only (For adding in The Annual Sales Tax Circular, 2014).

Ram Raj 11-11-14
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

**ORDER OF CLARIFICATION MADE BY SHRI HARDEEP KUMAR, IAS,
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT OF HARYANA,
EXCISE & TAXATION DEPARTMENT,
Under Section 56(3) of the Haryana Value Added Tax Act, 2003
To M/s. Paramount Iron & Steel Works (P) Ltd., Sonapat**

M/s. Paramount Iron & Steel Works (P) Ltd., M-17-A, Industrial Area, Sonapat (TIN-06883007926) (hereinafter referred to as the applicant) has sought a clarification under section 56(3) of the Haryana Value Added Tax Act, 2003 (hereinafter referred to as the Act) regarding rate of tax applicable on the sale of following goods under the Act:-

1. Expanded Cellular Polyethylene Sheets.
2. Air Bubble Sheets.
3. Air Bubble Sheets Articles.
4. Expanded Cellular Polyethylene Sheets Articles
5. Air Bubble Sheets Reflective Insulation
6. Expanded Cellular Polyethylene Hoses/Pipes/Roads.

2.1 According to the statement of facts and at the time of personal hearing given to the applicant, it was stated that the applicant is a manufacturer of the above products having its manufacturing unit at Sonapat and presently all the above goods are sold to the manufacturers in Haryana by charging tax @ 4% against Form VAT D-1 being industrial inputs and packing material, and sold to dealers located outside Haryana by charging central sales tax @ 2% against Form C under the Central Sales Tax Act, 1956 (for short the CST Act). According to the applicant all these goods are used by various industrial units for the purpose of packing of their manufactured goods exclusively and for no other purpose. That is why it is his understanding that these goods fall under Entry No. 102 of

Schedule C and hence are liable to tax @ 4% even without Form VAT D-1 as presently goods falling in entry 102 of Schedule C are taxable @ 4% only.

2.2 The applicant has also taken reliance of two decisions namely of (i) Punjab & Haryana High Court in the case of *M/s. Lakshami Polyfab versus Union Territory of Chandigarh* and another reported as (2008) 31 PHT 74 (P&H), and (ii) *Haryana Tax Tribunal in the case of M/s. Rishabh Farms Industries Limited, Jhajjar & others Versus State of Haryana* decided on 03.06.2010. It is further stated by the applicant that strictly relying on these two decisions as the raw material for manufacturing of the above mentioned products is Low Density Polyethylene (LDPE) mentioned at sub-entry 133 of main entry 102 and hence the products manufactured by him also qualify under the main entry as industrial packing materials and hence taxable @ 4%. But when asked to name the sub entries in which these products would fall, the applicant could not name any specific sub-entry (of main entry 102 of Schedule C of the Act) in which the products manufactured and sold by him would fall but stressed his case on the main entry heading only.

3.1 The issue has been examined. As per the scheme of rate of tax contained in section 7 of the Act goods falling in any of the Schedules appended to the Act are liable to tax at the rates specified for that Schedule unless any special tax rate is notified by the government for a commodity or class of commodities. Further, if any goods do not fall in any of the Schedules, then in the light of entry contained in clause (iv) of sub-section (1)(a) of section 7 of the Act, it is treated as unclassified goods and taxed at unclassified rate which is presently 12.5%. Further present rate of tax for Schedule C goods is

5% except goods falling in entry 102 which are industrial inputs and packing material and taxable @ 4%. This Entry No. 102 reads as "**Industrial inputs and packing materials that is to say-.....**" and there are total 187 sub-entries given under the main Entry and these sub-entries contain description of goods and Tariff Item under which described goods are covered. A cursory reading of these sub-entries reveals that it contains various industrial inputs and also packing materials. For example sub-entry 149 reads as "*Articles for the packing of goods, of plastics; namely boxes, cases, crates, containers, carboys, bottles, jerry cans and their stoppers, lids, caps of plastics (but not including insulated ware)*"; sub-entry 155 reads as "*Cartons (including flattened or folded cartons) Boxes (including flattened or folded boxes) cases, bags and other packing containers of paper, paperboard, whether in assembled or unassembled condition*", sub-entry 157 reads as "*Paper self adhesive tape and printed wrappers used for packing*", and sub-entry 161 reads as "*Sacks and bags of a kind used for the packing of goods, of jute or of other textile based fibres of heading No 5303*". Thus a plain and unambiguous reading of this entry No. 102 means that only the industrial inputs and packing material falling in its sub-entries are liable to tax rate of 4% and not otherwise. As mentioned above various packing materials have been specially mentioned and included in various sub-entries of the main entry so only those goods which strictly fall in these sub-entries would qualify to be taxed @ 4% only. Besides, there is also an entry at Serial No. 45 which reads as "*Jute bags, laminated jute bags and High Density Poly Ethylene bags*". Thus there is no intention of the legislature to include all types of packing materials under the entry at Serial No. 102 otherwise this separate entry at Serial No. 45 would not have been inserted in the Schedule C.

3.2 The applicant could not name or specify any of the sub-entry in which his manufactured products would fall but is taking support of the title of the main entry which reads "*industrial inputs and packing material*" but has failed to read the words "*that is to say*" simultaneously and in continuity. When these words are read in continuity then the only interpretation that emerges is that the goods specified and falling in the sub-entries only will qualify for the tax rate applicable to the main entry 102.

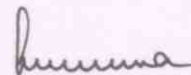
3.3 The applicant has relied on a decision of the Hon'ble Punjab & Haryana High Court delivered in the case of a dealer of Union Territory of Chandigarh. But the facts of the case are distinguishable to the case of the applicant and hence the decision does not help the applicant. The dealer of Chandigarh was selling HDPE sheets as packing material to different buyers under the product billed as "HDPE" and claimed that the raw material for the manufactured product was also "HDPE". Under the Punjab Value Added Tax Act, 2005 (as applicable to the Union Territory of Chandigarh) there existed three entries in their Schedule B (taxable @ 4%) and their main entry 58 related to "industrial inputs and packing materials" also contained two sub-entries namely (i) sub-entry 162 pertaining to "High Density Polyethylene" (HDPE) and (ii) sub-entry 202 read "packing material including plastic containers, tin containers and glass containers". The Hon'ble High Court while holding that HDPE sheets sold by the petitioner were taxable @4% relied primarily on the nomenclature of the product i.e. "HDPE" being considered and sold as such. The issue for determination was whether "HDPE" (as the petitioner has sold the HDPE sheets by mentioning HDPE in sale invoice and it was not disputed) would fall under the item "textile" and tax free or taxable as packing material as claimed by the department. As the HDPE was

undisputedly used and sold as packing material only, and harmonious reading of main entry 58 with sub entries 162 (HDPE) and 202 (packing material including plastic containers, tin containers and glass containers) led the Hon'ble High Court to hold the goods in question were taxable @ 4% being packing materials.

3.4 The second decision of the Hon'ble Haryana Tax Tribunal is also on the same product and on the same analogy relying upon the decision of the Hon'ble Punjab & Haryana High Court. But it is also noteworthy that the Hon'ble Tribunal did not decide the rate of tax applicable on the goods but only determined whether HDPE fabric was included in the entry "textile" or packing material. Thus the ratio of the decision is not applicable to the case of the applicant.

4. Therefore, in the light of the above, it is clarified that:-

- a) The goods falling in any of the Schedules appended to the Haryana VAT Act, 2003 are liable to rate of tax specified for that Schedule;
- b) The goods not falling in any of the Schedules appended to the Haryana VAT Act, 2003 are unclassified and non-scheduled goods and liable to rate of tax notified for unclassified and non-scheduled goods;
- c) As the goods in question do not fall in Entry 102 of the Schedule C of the Act and hence not liable to tax @ 4%.



(HARDEEP KUMAR)

Chandigarh Additional Chief Secretary to Government, Haryana
Dated: 5.11.2014 Excise & Taxation Department