

From

Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All the Dy. Excise & Taxation Commissioner (ST),
in the State of Haryana.Memo No. 705/ST-I,
Panchkula, dated the 28/2/13**Subject: Circulation of Clarification-M/s Maspar Industries Pvt Ltd. &
M/s Bombay Dyeing & Manufacturing Co. Ltd., Mumbai.****MEMORANDUM**

A copy of clarification order issued by the Principal Secretary to Government of Haryana, Excise & Taxation Department under section 56(3) of Haryana Value Added Tax Act, 2003 sought by M/s Maspar Industries Pvt Ltd. 80 Sector 25, HUDA, Panipat (TIN: 06812612156) & M/s Bombay Dyeing & Manufacturing Co. Ltd., Mumbai is sent herewith for information and necessary action by all the concerned.

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

Endst. No. 706 / ST-I, Panchkula, dated the 28/2/13

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

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| Regd. | 1. | Sh. K.K. Bomb, Advocate M/s Maspar Industries Pvt Ltd., 1193, Sector 15 Part II, Gurgaon |
| Reqd. | 2. | M/s Bombay Dyeing & Manufacturing Co. Ltd., C-1, Wadia International Centre, Pandurang bhudhkar Marg, Worli, Mumbai - 400025. |
| | 3. | Jt. Excise & Taxation Commissioner (Divison/Range) Ambala, F/Bad, Gurgaon and Hisar. |
| | 4. | All Joint Excise & Taxation Commssioners (Appeals) in the State of Haryana. |
| | 5. | Senior Deputy Accountant General (Audit), Haryana, Chandigarh. |
| | 6. | Dy. Excise & Taxation Commissioner (Vigilance), Haryana Vigilance Bureau, Sector-6, Panchkula. |

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

Endst. No. 707 / ST-I, Panchkula, dated the 28/3/13

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 Commissioner
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, 2013).

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

**ORDER OF CLARIFICATION MADE BY SHRI RAJAN GUPTA, I.A.S.,
PRINCIPAL SECRETARY TO GOVERNMENT OF HARYANA,
EXCISE & TAXATION DEPARTMENT,
Under Section 56(3) of the Haryana Value Added Tax Act, 2003.**

This is an order issued under section 56(3) of the Haryana Value Added Tax Act, 2003 (here in after referred to as the VAT Act) on clarifications sought by (i) M/s. Maspar Industries Pvt Ltd., 80 Sector 25, HUDA, Panipat (TIN: 06812612156) (for short "Maspar") and (ii) M/s. Bombay Dyeing & Manufacturing Co. Ltd., Mumbai on issues relating to textile and textile products.

2. As per the statement of facts and interpretation of law by Maspar:

- i. Bed sheets, bed covers, napkins, towels, table cloth and curtains form part First of entry 51 of Schedule B of the VAT Act and condition of levying of Additional Excise Duty (AED) is not applicable on these.
- ii. Cushion cover, pillow cover, bolster cover and duvet cover do not form part of First Part of entry 51 and hence not tax free unconditionally and exigible to tax and the applicant Maspar is charging vat @ 12.5% on these items.
- iii. What is vat rate applicable on the items mentioned in (ii) above?
- iv. What will be rate of tax on pillow covers when pillow covers are sold with bed sheets?
- v. Bombay Dyeing wants to know the vat rate on sale of bed sheets, towels, blankets, pillows, comforters and duvet covers.

- 3 Maspar has taken support of the following:
- (i) Instructions issued by the Excise & Taxation Commissioner, Haryana vide memo No.1662/ST-1 dated 6.7.2001
 - (ii) Clarification issued to M/s Rubi Enterprises, Jagadhri
 - (iii) Decision of the Hon'ble Haryana Tax Tribunal in the case of Sidhart Overseas, Panipat v/s State of Haryana wherein clarification issued to M/s. Jiwnani, Gurgaon was under challenge
 - (iv) clarification dated 12.1.2011 issued to M/s. Haryana Textile Import & Export Association, Panipat; and
 - (v) Two decisions reported as **36 STC 575 and 39 STC 93**.

4. Before examining the arguments taken support of by the applicants, it is important to go briefly into the background of levy of vat on textiles. Earlier sugar and textiles were liable to AED under the Additional Excise Duty (Goods of Special Importance) Act, 1957 (here-in-after referred to as AED Act) but the Government of India vide Finance Act, 2011 which received the assent of the President of India on 8.4.2011, have removed both sugar and textiles from the Schedule to the AED Act. This means that the State Governments are now free to levy vat on these commodities henceforth. In Haryana, there has been no change in the provisions. The status of vat on textiles continues to govern under the entries already contained in the VAT Act. The present clarifications seem to have been sought in the light of the above amendment.

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5. The entries which are subject matter of interpretation are placed at serial no. 51 and 52 in Schedule B of the VAT Act and are reproduced as under:-

"51 All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which additional excise duty in lieu of sales tax is not levied.

52 All varieties of textiles covered by item 51 on which knitting and embroidery work has been done provided additional Excise Duty in lieu of sales tax is levied on them."

6. Now about the submissions made by the Maspar. The instructions taken support at para 3(i) were issued under the Haryana Haryana General Sales Tax Act, 1973 (since repealed) after examining the entries pertaining to textiles available in the Schedules of that Act. A plain and clear understanding of the above clarification is that the readymade bed sheets continued to be tax free in the light of the entry contained at Sr. No. 14 of Schedule B of the repealed Act notwithstanding the fact that the same were made liable to sales tax @ 4% vide entry No. 23 contained in the list of goods liable to tax at the specified rates. But these instructions were issued in the light of the entries in the repealed Act and hence do not have any bearing on the present VAT Act.

7. Clarification at para 3(ii) issued to M/s. Rubi Enterprises, the understanding and interpretation of entry 51 and 52 of Schedule B of the VAT Act was clarified to the extent that "only those textile on which AED

has been paid were covered under these entries and hence qualified for exemption from VAT". It was further clarified that "thus only those bed sheets, bed covers, table cloth, tapestries and curtains which have suffered AED in lieu of sales tax are covered under the term textile and hence exempt from levy of VAT under the Haryana VAT Act, 2003". Regarding pillow covers and cushion covers it was clarified that these are liable to vat @ 12.5% at general rate as these are neither covered under textile nor under readymade garments.

8. In the clarification at para 3(iii) issued to M/s. Jiwnani, it was clarified that "cotton, woolen or silken textiles including rayon, artificial silk or nylon shall be covered under entry 51 only when AED is leviable on these goods" and "since, on the fabric imported from abroad no AED is leviable, the same is not covered under entry 51 of Schedule B of the Haryana VAT Act and hence is not exempted from levy of VAT" (see concluding para). But on appeal, the Hon'ble Haryana Tax Tribunal in the cited case of M/s. Sidhardh Overseas, Panipat V/s State of Haryana reported as (2010) 35 PHT 512, did not uphold this view of the department and held that "**All varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon**", were tax free unconditionally and irrespective of any AED is leviable or not on these goods and that condition of AED was affixed only to the second part of the entry i.e. "**but not including such carpets, druggets, woolen durrees, cotton floor durrees, rugs and all varieties of dryers felts**". The net result and implication of this judgment of the Hon'ble Haryana Tax Tribunal was that the clarification issued to M/s. Rubi Enterprises and M/s. Jiwnani

became redundant so far as they related to the interpretation of entry 51 linking *"all varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon"* with the payment of AED.

9. The next clarification issued to M/s. Haryana Textile Import and Export Association, Panipat pertains to the levy of VAT on blankets other than those manufactured by composite units. In the light of the entry contained at Serial No. 14 of Schedule B of the repealed Act and Entry 51 of Schedule B of the present VAT Act it was clarified that *"under Haryana VAT Act entry 51 of Schedule B viz 'all varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets, woolen durries, cotton floor durries, rugs and all varieties of dryer felts on which additional excise duty in lieu of sales tax is not levied' is just identical to entry 14 of Schedule B under the HGST Act, 1973 (as amended vide notification No.Leg.1489 dated 1.10.89) and, in view of the aforesaid facts, there is merit in representation of the Association that blankets as such, other than those manufactured by composite units are not taxable under the Haryana VAT Act, 2003"* (see concluding para). Thus the net effect of this clarification can be said to be that the blankets continue to be covered under the term textile and hence tax exempted and only those blankets falling under Entry 15 contained in Schedule C of the VAT Act i.e. *"Blankets manufactured by composite units"* were liable to vat under the VAT Act. It is also added for knowledge sake that in the light of "Note 4" contained in Schedule C of the VAT Act which reads as *"Goods of the description contained in this Schedule shall be deemed to have been*

excluded from Schedule B", blankets manufactured by composite units are taxable under the VAT Act notwithstanding any entry contained in Schedule B of the VAT Act.

This answers the query raised by Bombay Dyeing on rate of tax applicable to sale of blankets.

10. Two judgments examined and relied by the department while issuing clarification dated 6.7.2001 discussed in para 3(iii) above are M/s. Delhi Cloth and General Mills Company Limited, V/s Commercial Tax Officer, Central Section, West Bengal & Others (Calcutta High Court) and Radhika V/s State of Orissa (Orissa High Court). In the case of M/s. Delhi Cloth and General Mills Company Limited, V/s Commercial Tax Officer, Central Section, West Bengal & Others reported as (1975) 36 STC 575 (Calcutta), the facts were that the Commercial Tax Officer refused to accept the contention of the petitioner company that stitched bed sheets and stitched towels were cotton fabrics and subject to levy of Excise Duty. The petitioner company was a manufacturer of textile and on confirmed demand the said articles were cut from pieces in bona fide consumer lengths and the ends of such cut lengths were made into bed sheets, bed spreads, towels, napkins and dusters after stitching at the end inside the petitioner's mill premises and also paid basic duty, additional Excise Duty and cess at the time of their clearance. It was contended by the petitioner company that since basic duty, AED and cess have been paid on these items and hence these continued to be covered under the term fabric falling under entry 19 of the First Schedule of Central Excise & Salt Act, 1944. The Hon'ble Court held that these items were duly covered

under Entry 19 and there was no basis for holding that stitched material although continued to retain the essential nature of the cotton fabric were liable to Sales Tax. However it was further held that *"in case of dyeing, printing or embroidery works were made on stitched bed sheets, bed spreads, towels, napkins etc. the material may not retain their essential character of cotton fabric and may become something more"*.

11. In the second judgment of Orissa High Court in the case of M/s. Radhika V/s State of Orissa reported as (1997) 39 STC 93, the decision of Hon'ble Calcutta High Court discussed above was relied upon and it was held that mill made cloth when cut into pieces and stitched into sizes of bed sheets, napkins and towels continued to be mill made fabrics within the meaning of Entry 33 of the list of tax free goods and would be exempt from tax and further that sale of pillow covers is exigible to sales tax not being covered under the list tax free goods. This entry 33 as contained in tax free goods read as *"All mill made fabrics made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including processed fabrics, made in the processing mills"*.

12. Thus from a plain and clear interpretation of the above two judgments it emerges that *"mill made cloth or fabric or textile when cut into pieces and stitched into sizes of bed sheets, napkins, towels, bed spreads etc continued to fall under the term cloth or fabric or textile"*. But the second and crucial implication is that *"after cutting of the cloth into pieces of bed sheets, bed spreads, towels, napkins, etc. and performing the work of dyeing, printing, embroidery, knitting etc would not retain their essential character of fabric and make that something*

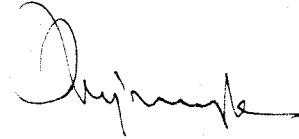


more and hence they would be liable to tax under the sales tax laws". Even when we read into the entry contained at Serial No. 52 of Schedule B which says that "all varieties of textile covered by item 51 on which knitting and embroidery work has been done provided additional Excise Duty in lieu of sales tax is levied on them" it clearly means that "textiles on which knitting and embroidery work has been done and no AED is levied would be liable to VAT under the VAT Act as after the passing of Finance Act, 2011 as textile has been removed from the schedule of AED Act." Therefore, all varieties of textiles covered by item 51 on which knitting and embroidery work has been done are now liable to VAT under the VAT Act.

13. In the light of the discussions made above, it is further clarified that:

- a) Mill made cloth or fabric or textile when cut into pieces and stitched without any other value addition into sizes of bed-sheets, bed-covers, bed-spreads, towels, table cloths, curtains, napkins, shawls and sarees etc fall under the term cloth or fabric or textile and hence these items are tax exempted under the VAT Act;
- b) Pillow covers, comforters, duvet covers, cushion covers, bolster covers, ready to use curtains, etc are liable to vat @ 12.5% as unclassified goods being not covered under 'textile' as contained in entry 51 of Schedule B of the VAT Act;
- c) Pillow covers when sold with the bed sheets are liable to vat @12.5% on their sale value.

d) Bed-sheets, bed-covers, bed-spreads, towels, table cloths, curtains, napkins, shawls and sarees etc falling under (a) above on which any value addition work like knitting, embroidery work etc has been done are liable to vat as unclassified goods in view of entry 52 of Schedule B of the VAT Act.



(RAJAN GUPTA)

Principal Secretary to Government Haryana,
Excise and Taxation Department

Dated: 25.3.2013
Chandigarh