

- Read :-** 1. Application filed on dt.23.11.2005 by M/s. Lotus Electricals.
2. Determination Order dt.07.01.2011 in the case of M/s. Lotus Electricals.
3. Judgment dt.24.02.2011 by the Hon. Maharashtra Sales Tax Tribunal in the case of M/s. Lotus Electricals.
- Heard :-** Shri Ratan Samal (Advocate) attended the hearing.

PROCEEDINGS

(under section 56(1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ-11-2011/Adm-3/19/B-5

Mumbai, dt. 9/7/2013

An application was received from M/s. Lotus Electricals, having Registration No.400063/S/1341 and address as 17, Rocky Ind. Estate No.1, I.B. Patel Road, Goregaon (East), Mumbai-400 063 requesting determination in respect of the rate of tax applicable to the product "*Lotus' make Copper Terminals*" sold through invoice No.291/2005-06 dt.04.11.2005. The applicant was of the opinion that the product stood covered by the following description contained in the notification for Information Technology (IT) products - "*Switches, connectors and Relays for upto 5 Amps. at voltage not exceeding 250 volts, electronic fuses*". This description was further amended by notification dt.17.10.2005 as - "*Switches, sockets, connectors, relays and accessories thereof for upto 6 Amps. for voltage not exceeding 250 volts, electronic fuses*". Since the notification makes a reference to the classification under Central Excise, the applicant was called upon to submit the evidence in respect of the excise classification applicable to the product. The applicant's product as referred to in the invoice was a "Terminal" whereas the notification makes a reference to "Connectors". Therefore, during hearing and even thereafter, the applicant was called upon to produce evidence that his product is a '*connector upto 6 Amps. at voltage not exceeding 250 volts*' which attracts a concessional rate as per the notification for IT products. However, the applicant was persistent with the argument that the condition of '*upto 6 Amps. at voltage not exceeding 250 volts*' was applicable to 'relays' and not to 'connectors' as the word 'connector' was separated from the word 'relays' by a ',' (comma). In view of the applicant not replying to the query made and thereby, no evidence having been produced, there seemed no alternative but to reject the determination application. Accordingly, an order to the effect was passed on dt.07.01.2011.

Being aggrieved by the order, the applicant preferred an appeal before the Hon. Maharashtra Sales Tax Tribunal (MSTT). The Hon. MSTT was pleased to dispose the appeal with directions to decide the matter afresh after considering the material available on record and giving one more opportunity to the applicant to produce the requisite details. It is in these circumstances that I am called upon to decide the question of the rate of tax applicable to the product '*Lotus' make Copper Terminals*'.

02. HEARING

With due respect to the directions of the Hon. MSTT, the case of the applicant was placed

for hearing. On dt.14.02.2012, Shri Ratan Samal (Advocate) attended on behalf of the applicant and argued as follows :

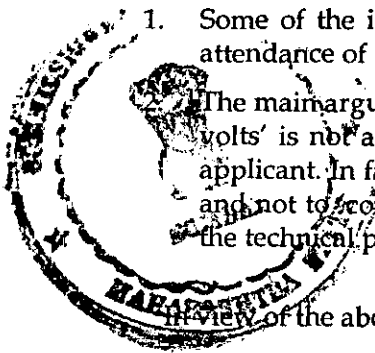
1. The impugned product is a connector/terminal.
2. The condition of '*upto 6 Amps. at voltage not exceeding 250 volts*' was applicable to 'relays' and not to 'connectors' as the word 'connectors' was separated from the word 'relays' by a ', (comma)'.

It was brought to the notice of the applicant's representative that the argument at sr. no. 2 was tendered in the earlier determination proceedings, too, and adequately dealt with in the Determination Order dt.07.01.2011 wherein it was observed that the condition of '*upto 6 Amps. at voltage not exceeding 250 volts*' applies to all the products placed prior to the condition. Further, it was reminded that the application was rejected on account of failure to produce any evidence that the connectors of the applicant satisfied the condition of '*upto 6 Amps. at voltage not exceeding 250 volts*'. However, the Advocate maintained that it is still his argument that the condition was applicable to 'relays' and not to 'connectors'. In response to the request to produce evidence in terms of the product placed for determination, it was replied that he would not give any evidence as he was of the opinion that he is not required to do so as the condition does not apply to him. Despite the argument, the applicant was asked to attend on dt.06.03.2012 with a technical person to help appreciate the technical details of the product. However, none attended on the said date.

On the next hearing on dt.10.07.2012, Shri Ratan Samal (Advocate) was asked regarding the attendance of the technical person to which it was submitted as follows :

1. Some of the impugned products exceed the condition of '*6 Amps and 250 volts*', the attendance of technical person is not required.

The main argument is that the condition laid down in the notification about '*amps and volts*' is not at all applicable to connectors which happens to be the products of the applicant. In fact, it is argued that the condition is applicable to '*relays and accessories*' and not to '*connectors*' on account of the punctuation and therefore the attendance of the technical person is unwarranted.



In view of the above submission, the following questions were posed to the applicant :

- i. The determination is sought in respect of the product '*terminal*' as mentioned in the invoice whereas the word used for the purposes of the notification is '*connectors*'.
- ii. The notification is excise based. Hence, it is queried about the excise classification applicable to the product.

In reply to the above, it was submitted as follows :

1. The brochure clearly shows that the applicant is manufacturing terminals & connectors. In the market & as per common parlance, the product '*terminal*' and '*connector*' is the same. In support of the same, he is relying on the Explanation given in Brussels interpretation, more particularly in Chapter 8536-Explanation III - clause B.
2. The RT12 statements brought on record clearly show that the product under dispute

falls under the CETH 853690.

The applicant's representative was asked whether he has any other say in respect of the determination application to which he submitted that elaborate arguments have been made in earlier hearings as well as written submission & judgments have been brought on record.

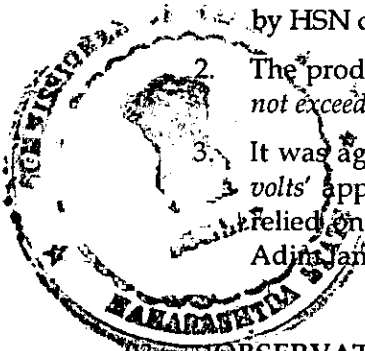
Thereafter, with a view to appreciating the arguments of the applicant, a letter dt.25.02.2013 was issued calling for certain details as follows :

1. Whether 'Terminal' and 'Connector' is one and the same thing in trade parlance and technical parlance?
2. Whether the products put forth for determination satisfy the condition indicated in the notification i.e 'upto 6 Amps. at voltage not exceeding 250 volts'?

The aforementioned letter categorically mentioned that the aforesaid details are crucial to decide the case and failure on the applicant's part to furnish the same would leave no option but to decide the issue on the basis of the information available on record. However, the applicant failed to respond to the same.

A hearing was later fixed in the matter on dt.07.05.2013 but the same could not take place. A final hearing in the matter was held on dt.26.05.2013 when Sh. Samal (Advocate) attended and reiterated the facts and requested to consider the written submission made on dt.23.07.2010. Since the information as called for in the aforementioned letter was not furnished, he was asked about the same. It was replied thus :

1. Terminal is a metal part which receives the electric dominoes. Both are co-terminous. One cannot function without the other. It is a composite term. The view is supported by HSN classification.
2. The products put up for determination exceed the condition of 'upto 6 Amps. at voltage not exceeding 250 volts'.
3. It was again reiterated that the condition of 'upto 6 Amps. at voltage not exceeding 250 volts' applies only to 'accessories' as mentioned in the entry. For contending thus, he relied on the Supreme Court judgment in the case of State of Maharashtra v. Mana Adin Jamat Mandal [(2006) 4 SCC 98].



03: OBSERVATIONS

I have gone through the facts of the case. These proceedings in remand arise in view of the Hon. MSTT directions to decide the matter afresh after considering the material available on record and giving one more opportunity to the applicant to produce the requisite details. As can be seen from the details reproduced in para 1 and 2, the applicant has been offered ample opportunity to present his say as also to offer any supporting evidence. I begin to determine the issue as follows :

I am called upon to determine the rate of tax applicable to a product referred to as "Lotus' make Copper Terminals' in the invoice No.291/2005-06 dt.04.11.2005. The applicant has given 2

another invoices. However, the sale evidenced therein is an inter-state sale. Hence, I restrict my observations to the product sold in Maharashtra. The details of the aforementioned invoice are :

<u>'Lotus' make Copper Terminals'</u>					
	<u>P.O.No.PM-1455 dt.30.10.2005</u>				
1.	16mm2 LRSI - 7126 E8 (Your code No.032H38)	200	Nos.	.85 each	970.00
	<u>P.O.No.PM-1455 dt.30.10.2005</u>	1000	Nos.	3.45 each	3450.00
2.	10mm2 LRSI - 7121 E8 (Your code No.032H37)				
		1200	Nos.		4420.00
		Less :		15% Discount	<u>663.00</u>
					3577.00
		Add :		Courier Chgs.	<u>220.22</u>
					3977.00
		Add :		4% M.VAT	<u>159.00</u>
					<u>4136.00</u>

The applicant claims that the impugned product is covered by the notification for IT products issued for the purposes of the entry 56 of the schedule C of the MVAT Act,2002. The entry reads thus- ***"IT Products as may be notified by the State Government from time to time."*** More specifically, it is contended that the impugned product is covered by the word 'connectors' as appearing in the description against the entry at sr. no. 22 in the notification No.VAT-1505/CR-116/Taxation-1 dt.01.04.2005 issued for the purposes of the said entry 56 :

85.36	<i>Switches, connectors and relays for upto 5 amps at voltage not exceeding 250 volts, electronic fuses.</i>
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The above notification was amended by the notification No.VAT-1505/CR-237/Taxation-1 dt.17.10.2005. The entry at sr. no. 28 of this notification reads thus :

8536	<i>Switches, sockets, connectors, relays and accessories thereof for upto 6 amps at voltage not exceeding 250 volts, electronic fuses.</i>
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Since the notification makes a reference to the Central Excise Tariff Heading (CETH), I may look at the description appearing therein for the Heading 8536 (for 2005-06) as follows :

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1000 volts
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A reference to the description as appearing against the CETH 8536 reveals that the same is not taken verbatim for the purposes of the notification for IT products. *What this means is that not all commodities falling under the CETH 8536 have been notified for the purposes of the entry for IT products under the MVAT Act,2002.* And the notification in clear words highlights this aspect in the NOTE appearing thereto :

NOTE - (2) Where any commodities are described against any heading or, sub-heading or as the case may be, tariff item, and the aforesaid description is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then only those commodities described as aforesaid will be covered by the scope of this notification and

other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.

Thus, the Heading 8536 as appearing in the Central Excise Act covers all electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits for a voltage not exceeding 1000 volts. Whereas the notification for the purposes of the MVAT Act,2002 covers only switches, sockets, connectors, relays and accessories thereof for upto 6 amps (earlier 5 amps) at voltage not exceeding 250 volts and electronic fuses. By the notification 17.10.05, sockets and accessories of switches, sockets, connectors & relays have been included. It is further seen that the condition of amps and voltage volts is made applicable to all items appearing before the condition but not to electronic fuses which appear after the condition.

Now, the applicant has claimed that his product is the 'connector' as mentioned in the aforesaid description against the heading 8536 for the purposes of the notification. However, the invoice furnished by the applicant describes the impugned product as a "terminal". In view of the applicant's contention that his product 'terminal' is a 'connector' as described in the notification, I need to ascertain whether the applicant's product i.e 'terminal' is the same as the product 'connector'. However, prior to that, it is imperative for me to deal with the interpretation of the applicant as regards the applicability of the condition of 'amps and volts' to the products mentioned in the notification. Thus, I am called upon to deliberate on the following :

A. SCOPE OF THE CONDITION - 'upto 6 amps at voltage not exceeding 250 volts'

B. WHETHER THE IMPUGNED PRODUCT 'TERMINAL' IS THE SAME AS A 'CONNECTOR' NOTIFIED FOR THE ENTRY FOR IT PRODUCTS

I would decide the issues in the order as above :

A. SCOPE OF THE CONDITION - 'upto 6 amps at voltage not exceeding 250 volts'

The applicant has argued that the condition of "6 amps and voltage not exceeding 250 volts" is applicable to relays only. I have reproduced the description against the Heading 8536 as appearing under Central Excise. The description therein covers electrical apparatus for a voltage not exceeding 1000 volts. Thus, there should be no dispute that under the Central Excise, the condition of 1000 volts is made applicable to all the products covered by the CETH 8536. What it means is that one of the condition pertaining to 'volts' as appearing in the notification is supported by the position as appearing under the Central Excise. While notifying IT products for the purposes of the MVAT Act,2002, the legislature has sought to cover only certain specified electrical apparatus satisfying the condition of "6 amps and voltage not exceeding 250 volts". Further, the condition is not made applicable to electronic fuses. A plain reading of the words as appearing for the purposes of the notification is that the condition of "6 amps and voltage not

exceeding 250 volts" is applicable to switches, sockets, connectors, relays and accessories thereof. However, the applicant has contended that the condition is applicable to 'relays and accessories' only. The contention made in a write-up alongwith the application and in the submission dt.23.07.2010 could be summarized thus :

- The comma (,) differentiates and distinguishes each and every product in the aforesaid entry. After connector, there is a punctuation. Thereafter, the product "Relays and accessories thereof" is subjected to certain amperes and voltages. It means there is no condition of specific amperes or voltages in respect of the connectors or sockets or switches. The comma (,) after connectors, a specific product, which has nothing to do with amperes or voltages. In fact the legislature has imposed conditions to "relays and accessories" only. That is why, even after such condition of 6 amp. or 250 voltage, another product is classified which is known as electronic fuses, therefore, in the said entry, there is no condition imposed by the legislature for the product "switches" sockets, connectors, electronic fuses."
- In order to interpret punctuation marks i.e. (comma), the applicant has taken the aid of interpretation made in general grammar and few judicial pronouncements which can be quoted here as under:-

1. Concise Oxford Dictionary 10th Edition defines comma (,) as a punctuation mark (,) indicating a pause between parts of a sentence or separating items in a list.
2. In the view of answer.com in the internet, the comma (,) is often used to separate two independent clauses (a group of words that can function as a sentence) that are joined by a co-ordinating conjunction (for, and, nor, but, or, yet, and so, when they are used to connect; the acronym FANBOYS can be used as a memory aid). Some people feel this is obligatory, while others prefer to use the comma only when not doing so would lead to a different reading.

"I passed the test, but he failed." (comma) – "I passed the test" and "He failed" can function as separate sentences.

"I walked home and left shortly after" (no comma) – Although "I walked home" is independent, "left shortly after" is dependent on the first part of the sentence."

The comma is used to separate a dependent clause from the independent clause if the dependent clause comes first.

"After I brushed the cat, I lint-rolled my clothes. (comma)

I lint-rolled my clothes after I brushed the case. (no comma)"

The comma is used to separate items in lists. However, if the individual items in the list also contain commas, the list should be separated by a semi-colon(;).

3. Law Lexicon by P. Ramanathan Iyer, IInd Edition defines comma (,) as the smallest division of a sentence in language. The comma and semicolon are both used for the same purpose in punctuation, namely, to divide sentences and parts of sentences; the only difference being that the semicolon makes the division a little more prolonged than the comma.
4. The Hon'ble Supreme Court had an occasion to interpret the punctuation mark comma (,) in the matters of State of Maharashtra vs. Mana Adim Jamat Mandal,[(2006)

4 SCC 98] wherein it is held that "in view of the common pattern adapted in most of the entries that between one entry and another a comma (,) is provided. Held, each of the tribes specified in entry 18 must be deemed to be separate tribes and not sub-tribes of "Gond" - Therefore "Mana" is a separate scheduled tribe.

5. It is one of the cardinal principles of the canons of interpretation that if there is slightest possibility to classify an entry which is beneficial to the subject then the favourable interpretation should go to the subject. In support of this proposition, the applicant has relied on the following judgments:

- a) State of Kerala v. Attesee (Agro Industrial Trading Corporation) (72 STC 1)
- b) C.I.T. v. Madho Pd. Jatia (S.C.) (105 ITR 179)
- c) Bharat Vijay Mills Ltd. v. Commissioner of Commercial Taxes (Kar.) (85 STC 23)

I would deal with the applicant's argument as follows :

The applicant has tried to invite attention to the fact that there is a comma after the word 'connectors' and then the words "relay and accessories thereof" and the condition follows. Therefore, it is contended that the condition is applicable only to accessories of relays. Though the applicant's submission is inherently fallacious, I would, albeit, briefly deal with the same by referring to the rules of punctuation and interpretation of statutes by the Hon. Courts. The rules of punctuation provide that commas are used to separate items in lists. A comma is placed between the particulars mentioned in a succession of words all in the same construction. The following example may be seen :

Nouns as a list : Nouns name single items in these sentences. Commas demarcate them:

After the meeting all the chairs, tables, pens and paper they borrowed were returned.

It would be useful to refer to the views of the Hon. Courts with regard to the interpretation of 'comma' in a statute as follows :

1. In the decision in the case of Dendrapa Nath Basu vs Eastern Railways & Ors on 27 July, 2011 [C.O. No. 325 of 2007 With CAN 10373 of 2009], the observations of the apex court have been reproduced as follows :

"The three-judge Bench in case of State of West Bengal Vs. Swapan Kumar Ghua reported in (1982) 1 SCC 561 while considering the usefulness of the comma as an aid of interpretation held :

"Grammar and punctuation are hapless victims of the pace of life and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I therefore consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences."

In more recent judgment, the apex court in case of Bihar State Electricity Board Vs. Pulak Enterprises & Ors. reported in (2009) 5 SCC 641 held :

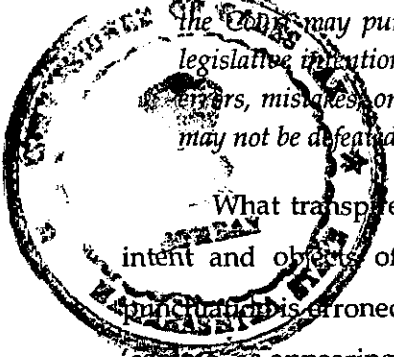
"40. Counsel for the writ petitioners referred to the "comma" occurring prior to the words "out of". Though sometimes presence or absence of comma has been taken aid of in interpreting the particular provision, the ordinary rule is that punctuation mark is a minor element in the interpretation of statute (see Aswini Kumar Ghose v. Arabinda Bose). More so, in the case of subordinate legislation." "

2. The Patna High Court in Gobardhan Joshi And Anr. vs The State Of Bihar And Ors. [AIR 1957 Pat 340] observed thus -

"Further, it is well-established rule of interpretation of Statutes that in interpreting it commas need not be necessarily taken into consideration and the Court has ordinarily to read the Statute without the commas inserted in it. They in fact do riot form part of the Statute especially in a case like the present one where the comma instead of helping the reading of the section makes the section completely meaningless."

3. The Andhra High Court in Saraswathi Chemicals, .vs. State Of Andhra Pradesh [2001 (6) ALD 301] observed thus :

"The punctuation of a statute may lend some assistance in its construction, but when the intention of the statute and the punctuation thereof are in conflict, the former must control the latter, even where the punctuation is regarded as a part of the statute. In other words, the punctuation will not control the plain meaning of the text of an enactment. Punctuation is always subordinate to the text, and the retention of a word is of far more importance than the position of a comma. Indeed, the Court may punctuate, or disregard existing punctuation, or repunctuate in order to give the legislative intention effect. If the true meaning of the Legislature appears from the entire enactment, errors, mistakes, omissions and misprints may be corrected by the Court, so that the legislative will may not be defeated."



- What transpires from the above is that statutes are to be interpreted in the light of the intent and objects of the same. In the present case, the applicant's argument as regards punctuation is erroneous in the first place. There should not be any difficulty in interpreting the 'comma' as appearing between the connector and relay and further in interpreting the group of words. Switches, sockets, connectors, relays and accessories thereof are a succession of words, all in the same construction. The intention of the legislature is to make the condition applicable to all the products appearing prior to the condition. Further, it would have been repetitive if the condition was mentioned for each and every item separately such as *Switches for upto 6 amps at voltage not exceeding 250 volts, Sockets for upto 6 amps at voltage not exceeding 250 volts, etc.* Instead of repeating the same for each and every item, the same is made applicable to all by a mention of the said condition at the end of the group of words.

The description as appearing in the notification is based on the situation as appearing under the Central Excise Tariff. It is not denied that the description as considered for the purpose of the notification is not as wide as the CETH and covers only the items specified therein. However, the point to be noted is that even the Excise Heading makes the condition of 1000 volts

applicable to all the products covered by the heading 8536. The Sales Tax legislation, while borrowing the description from Central Excise, has retained the condition of volts with a difference in the measure thereof. Thus, the intention as reflected in the notification finds support from the position as appearing in the Central Excise Tariff. The Hon. Courts have laid down that the intents and objects are to be seen. In view of the position as appearing under the Central Excise Tariff, all the arguments of the applicant in respect of the condition being applicable to only 'relays and accessories thereof' should not survive. Further, if we consider the applicant's argument then before amendment to the condition, the same applied to 'relays' only and after amendment to 'accessories of relays' only. Thus, going by the applicant's interpretation what was first applicable to 'relays' was made applicable to 'accessories of relays' only and inapplicable to 'relays'. One can see that a very illogical proposition is being sought to be advanced by the applicant. I have already observed earlier that if the condition was repeated for each of the items appearing in the entry, the entry would have been a classic case of an incorrect syntax. I am convinced that the intent of the legislature is to make the condition of "6 amps and voltage not exceeding 250 volts" applicable to all the items appearing before the condition and not to 'relays' only or 'accessories' only.

I refrain from commenting on the cases cited by the applicant in view of the Hon. Apex court's observations that *punctuation need not necessarily be taken into consideration when the intent and objects bring out the intention in enacting any provision*. Even as I reproduce this observation, I am convinced that the impugned entry does not suffer from any grammatical error. I respect the verdict in these judgments. I do not deny that each of the items appearing in the entry is separate. My only point is that the entry for ease of construction has mentioned a certain condition at the end of a list of separate items so as to make the same applicable to all the separate items enumerated in the entry. The intent of the legislation is to make the condition applicable to all the commodities preceding the condition.

I have mentioned that there are 2 notifications so far and I have reproduced both the descriptions. At the cost of repetition, I would reproduce the same for instant reference as under :

Switches, connectors and relays for upto 5 amps at voltage not exceeding 250 volts, electronic fuses.

Switches, sockets, connectors, relays and accessories thereof for upto 6 amps at voltage not exceeding 250 volts, electronic fuses.

Applying the applicant's argument would mean that there is no condition of specific amperes or voltages in respect of *Switches*. However, it is observed that in other states too, the same description as appearing in our notification has been followed. And my interpretation is supported by the interpretation followed in these States. In Karnataka, in view of the description in the notification for IT products - '*Switches, connectors, relays, fuses and sockets for upto 5 amps*', a clarification [No. CLR.CR.35/11-12, dated the 26th August, 2011] has been issued such that

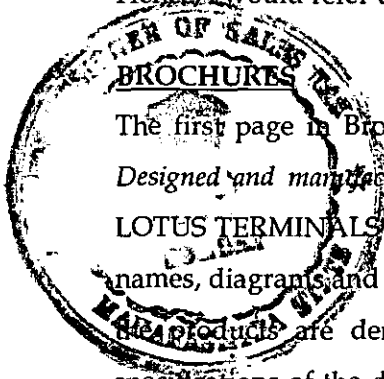
Switches for upto 5 amps and above 5 amps are taxable @5% and @14% respectively.

Therefore, in view of the clear intent of the legislation, without deliberating any further, I summarize the discussion by concluding that the condition of "6 amps and voltage not exceeding 250 volts" is applicable to switches, sockets, connectors, relays and accessories thereof except electronic fuses.

Having formed an opinion as above, I would revert to the contention of the applicant that his product 'terminal' is a 'connector' as mentioned in the notification thus :

WHETHER THE IMPUGNED PRODUCT 'TERMINAL' IS THE SAME AS A 'CONNECTOR' NOTIFIED FOR THE ENTRY FOR IT PRODUCTS

The applicant's product is referred to in the invoice as "Terminals". Hence, I have to appreciate whether a connector and a terminal are the same. The applicant has not provided any evidence in respect of the product other than the brochure. At this juncture, I am reminded of the directions of the Hon. MSTT that the applicant be given one more opportunity to produce the requisite details. While denying to furnish any further evidence, technical details, specifications, etc., the applicant has emphatically contended that the evidence in terms of the brochure and RT 12 statements submitted by him is sufficient to help understand the product. Hence, I would refer to the same. The applicant has given 2 Brochures which contain as follows :



The first page in Brochure 1 mentions - LOTUS CABLE & WIRE TERMINALS & SPLICES - Designed and manufactured for fast assembly, long & reliable performance whereas in Brochure 2 LOTUS TERMINALS is mentioned. On the remaining pages, different products alongwith their names, diagrams, and table of specifications are shown. Certain points on the diagram i.e parts of the products are denoted with alphabets. These alphabets are then referred to show the specifications of the different parts with regard to the different sizes or area. Product codes are assigned to the products falling in a particular product category e.g VIJAY, LBSS, WBCF, LRS, LFI, etc. [Brochure 1] and CTS, LEH, CPC, AL, LFI, APC, etc. [Brochure 2]. On the page from which the different products are listed, the words -'Terminals & Connectors' are mentioned. The products listed are :

BROCHURE 1

1. Soldering Copper Cable Lugs (Aluminium Cond.) - product code [VIJAY]
2. Soldering Copper Cable Lugs To B.S. 91:1973 (Copper Conductor) - product code [LBSS]
3. Copper Weak-Back Open Crimping Ferrules (Soldering Type) for Aluminium Conductors - product code [WBCF]
4. Copper Weak-Back Open Crimping Ferrules (Soldering Type) for Copper Conductors - product code [WBCF]
5. Soldering Type Copper Open-Close Terminals suitable for Aluminium Conductors - product code [LOC]
6. Copper Crimping Pin Type Terminals - product code [LCP]

7. Copper Crimping Pin Type Terminals (PVC Insulated) - product code [LCPI]
8. Copper Crimping Pin Type Terminals (Insulated with Metal Reinforcement) - product code [MILCP]
9. Copper Ring Tongue Fork Terminals for Copper/Aluminium Conductors - product code [LRS - FE -]
10. Copper Ring Tongue Fork Terminals (PVC Insulated) for Aluminium/Copper Conductors - product code [LRSI - FE -]
11. Copper Ring Tongue Fork Terminals (Insulated with Metal Reinforcement) for Alu./Co. Conductors - product code [MI - - - - FE -]
12. Copper Rectangular Tongue Fork Terminals - product code [LF - - - - E -]
13. Copper Rectangular Tongue Fork Terminals (PVC Insulated) - product code [LFI - - - - E -]
14. Copper Rectangular Tongue Fork Terminals (Insulated with Metal Reinforcement) - product code [MILF - - - - E -]
15. Copper Ring Tongue Terminals for Copper Conductors - product code [LRS - - - - E -]
16. Copper Ring Tongue Terminals (PVC Insulated) - product code [LRSI - - - - E -]
17. Terminals (Insulated with Metal Reinforcement) - product code [MI - - - - E -]
18. Copper Crimping Reducer Terminals for Aluminium Conductors - product code [WPC]

BROCHURE 2

1. Compression Type Copper Tubular Terminal Ends for Aluminium Conductors as per IS 8309 1976 TABLE 2 - product code [CTS]
2. Compression Type Copper Tubular Terminal Ends for Copper or Aluminium Conductors - product code [CTS]
3. Compression Type Copper Tubular Terminal for Copper or Aluminium Conductors - product code [CTS]
4. Copper Tubular Terminal Ends (Longer Palm-Blank) for Copper or Aluminium Conductors - product code [CTS]
5. Compressions Type Aluminium Tubular Ends for Aluminium Conductors as per TABLE 1 of IS : 8309 : 1976 - product code [AL]
6. Copper Crimping In Line Connectors for Aluminium Conductors as per IS : 8308 : 1976 - product code [LEH,CPC]
7. Copper Tubular End Sealing Ferrules for Solderless Crimping to Copper or Aluminium Conductors (As per DIN - 46228) - product code [LEH]
8. Copper Tubular End Sealing Ferrules for Solderless Crimping to Copper or Aluminium Conductors - product code [LEH]
9. Copper Tubular In-Line Connectors for Solderless Crimping to Copper or Aluminium Conductors - product code [LEH]
10. Copper Tubular End & In-Line Connectors for Solderless Crimping to Copper or Aluminium Conductors - product code [LEH]
11. Copper In-Line Connectors (Insulated) for Solderless Crimping to Copper or Aluminium Conductors - product code [LEHI]
12. Copper Tubular Ends & In-Line Connectors (Insulated) for Solderless Crimping to Copper/Aluminium Conductors - product code [LEHI]
13. Copper Crimping Connectors for Copper or Aluminium Conductors - product code [CPC -,LEH]
14. Aluminium Tubular Crimping In-Line Connectors To I.S. 8308 TABLE-1 - product code [APC]
15. Copper Tubular Terminal Ends for Solderless Crimping to Copper Conductors Ref : DLW Drawings - product code [CTS]
16. Copper Ring Tongue Terminal Ends (Insulated with Metal Reinforcement) for Solderless Crimping to Copper or Aluminium Conductors - product code [LPSD - - E -, LPSD - - R]
17. Copper Tubular Terminal Ends for Solderless Crimping to Copper Conductors Ref : CLW Drawings - product code [CTS]
18. Copper Ring Tongue Terminal Ends for Solderless Crimping to Copper or Aluminium Conductors Ref : DLW Drawings - product code [LRS - - - - E -]

A reproduction of the names of the products mentioned in both these Brochures reveals one significant aspect that the applicant deals in both Terminals and Connectors and both are differently referred to in the Brochure with regard to their specifications. We have seen that different product codes have been given for different products. *It definitely does not appear to be the case that the word 'terminal' has been interchangeably used for the word*

'connectors'. The products as mentioned in the invoice are 16mm² LRSI - 7126 E 8 and 10mm² LRSI - 7121 E 8. The product code LRSI is for the product category 'Copper Ring Tongue Terminals (PVC Insulated)'. It was brought to the notice of the applicant that both these products 7126 E 8 and 7121 E 8 are not mentioned in the brochures under the product code LRSI. When such basic details have not been given, I have to remark that the applicant has been wrongfully claiming, rather misleading, both during the earlier and present proceedings as well as before the Hon. MSTT, that he has given all the evidence. Nevertheless, I would go with the invoice submitted for determination which describes the impugned product as 'Lotus' make Copper Terminals'. The products were given during a re-hearing on dt.26.05.2013. It is seen that the two products are different. The difference being that, there is a capping of some material on one end of one of the products only and which was identified during hearing to be a 'connector'.

Since 'terminals' and 'connectors' are differently shown in the applicant's brochure itself and further since the product code LRSI as mentioned in the invoice put up for determination belongs to a 'terminal' [product category 'Copper Ring Tongue Terminals (PVC Insulated)], it could be safely concluded that the product posed for determination is a terminal and not a connector. Further, there was self admission during hearing that 'terminal' and 'connector' cannot function without the other. *What this admission in effect means is that the two are distinct items.*

I would now look at the other evidence given by the applicant. The applicant has given RT 12 statements for the period July, August & September 2005. The CETH and the products mentioned therein are as follows :

CETHS No.	Description of product
85369090	Electricals Soldering & Solderless Tubular Terminal Ends, Cable Lugs
85369090	Reducer Pins, Weak Back Ferrules and snap on connectors of different specifications
74040019	Copper scrap including Turning, Cuts, Strips end pieces Dust, punching etc.
78020090	Aluminum scrap

From the above, it can be seen that the applicant has shown both terminals & connectors under the same CETH. What the applicant is trying to hint is that terminals and connectors are covered under the same CETH. The applicant has also tried to invite attention to Explanation III - clause (B) of Chapter 8536 of HSN. I would reproduce the same as follows :

"III - APPARATUS FOR MAKING CONNECTIONS TO OR INELECTRICAL CIRCUITS

(B) Other connectors, terminals, terminal, strips, etc. These include small squares of insulating material fitted with electrical connectors (dominoes), terminals which are metal parts intended for the reception of conductors, and small metal parts designed to be fitted on the end of electrical wiring to facilitate electrical connection (spade terminals, crocodile clips, etc.)

Terminal strips consist of strips of insulating material fitted with a number of metal terminals or connectors to which electrical wiring can be fixed. The heading also covers tag strips or panels; these consist of a number of metal tags set in insulating material so that electrical wires can be soldered to them.

Tag strips are used in radio or other electrical apparatus."

A plain reading of just the initial words of the clause (B) in the above Note also hints at the obvious that *Terminals and Connectors are not one and the same*. They have been separately mentioned in the above Note. The Heading itself begins with the words '*Other Connectors, Terminals.....*' which should clear beyond doubts that terminals and connectors are not the same.

I have seen the diagrams on the brochures of the products referred to as **Terminals and Connectors**. The connectors appear as housings whereas the terminals differ in shape. When the Harmonized Commodity Description and Coding System Explanatory Notes (HSN) which lay down the standards for interpretation have themselves addressed both terminals and connectors separately, there should be little room for doubt. I need not discuss any further as the HSN itself addresses each of the two separately. Nevertheless, I would also refer to the information available in respect of terminals and connectors to have an understanding of these products :

➤ **HEIGHT'S TECHNICAL DICTIONARY**

CONNECTOR (Elec.)- Device for holding in electrical contact ends of conducting wires in such a manner that they be readily released.

TERMINAL (Elec.) - A point at which a connection is made between an electrical apparatus and the external circuit.

FREE DICTIONARY

CONNECTORS

A device that joins electric conductors mechanically and electrically to other conductors and to the terminals of apparatus and equipment.

TERMINALS

Electricity

a. A position in a circuit or device at which a connection is normally established or broken.

b. A passage of a conductor at such a position used to facilitate the connection.

CONNECTORS - An electrical connector is an electro-mechanical device for joining electrical circuits as an interface using a mechanical assembly. There are hundreds of types of electrical connectors. Connectors may join two lengths of flexible copper wire or cable, or connect a wire or cable or optical interface to an electrical terminal.

TERMINALS - A terminal is the point at which a conductor from an electrical component, device or network comes to an end and provides a point of connection to external circuits. A terminal may simply be the end of a wire or it may be fitted with a connector or fastener.

Types of terminals

- Splices
- Solder Lugs
- Tongue Crimp terminals (ring terminals)
- Turrets
- Test probes (pogo terminals)
- Clips
- Screw terminals
- Tab terminals (quick-connect, quick-disconnect)

- Wire nuts

➤ **EXTRACTS FROM ARTICLES ON THE INTERNET**

- **Terminals**

- A **terminal** is a metal fastener attached to the end of a wire, which makes the electrical connection.
- A **terminal** is the metal end of a wire, whereas a connector is the plastic housing for the terminal.

- **Connectors**

A device for forming an electricity-conducting joint between conductors of electricity, wherein the device either (1) consists solely of an electricity-conducting element having a contact surface for forming the joint or (2) comprises an assembly which includes an electricity-conducting element having a contact surface for forming the joint and further includes any structure necessary to support, carry, or encase the conductive element;

- **Title : Electrical terminal and electrical connector assembly - United States Patent 4684191**

Abstract : An electrical terminal for making connection to a ring tongue comprises two metal plates each having a central aperture and a semicircular shaft segment having a portion outstanding from the plate and a portion forming part of the periphery of the aperture. The shaft segment of one plate is force fitted into the aperture of the other plate, with the ring tongue surrounding the two shaft segments, so that the two shaft segments cooperate to provide a hollow shaft, contact springs on plates cooperating to provide a receptacle for a bus bar. The outer faces of the shaft segments and the walls of the apertures are complementarily tapered to enable the force fit. In use, a fastener is passed through the hollow shaft to secure the terminal to a guide fork, the assembly so formed being mounted on a slideway secured to a rack mounted electrical module to be connected to the bus bar.

Description : This invention relates to an electrical terminal, and to an electrical connector assembly for mating with a bus bar.

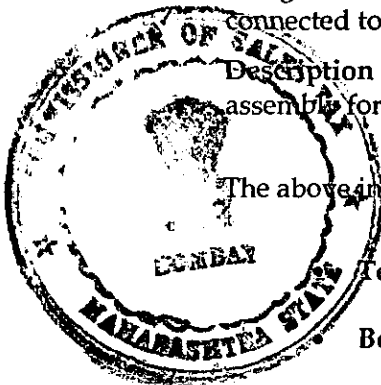
The above information in respect of terminals and connectors could be summarized thus :

Terminals & Connectors are two separate commodities.

Both the commodities are separately referred to in HSN.

- The information available in respect of these commodities also hints at their independent existence.
- The applicant himself treats the commodities as two distinct commodities.

I have reproduced earlier that the description for the purposes of both the notifications makes a reference to the commodity 'connectors' and not to 'terminals'. Further, we have also seen that the notification does not seek to cover the CETH 8536 in its entirety. Therefore, even though, it is argued that the commodity is cleared under the same CETH as connectors under the Central Excise, the IT notification for the purposes of the MVAT Act, 2002 covers only those commodities which have been specifically mentioned and as terminals are not mentioned in the said description, the same would not be eligible for inclusion in the notification. The product 'terminal' not being notified under the notification for IT products, the same would not be



covered by the schedule entry C-56 of the MVAT Act,2002. Further, it has been admitted during hearing that the products put up for determination exceed the condition of 'upto 6 Amps. at voltage not exceeding 250 volts'. Therefore, even if it was admitted that the impugned products are the 'connectors' as described in the notification, then also they would not have classified for coverage under the entry for want of fulfilling the condition appended to the entry.

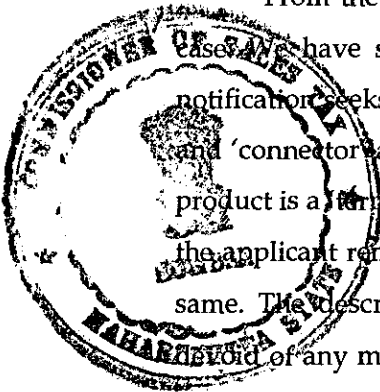
I have elaborately dealt with each of the arguments advanced by the applicant. As per the directions of the Hon. MSTT, I have ensured that the applicant is given every opportunity to place his say in the matter. In view of all deliberations on the issue, the discussion could be summarized that the impugned products are not the 'connectors' as notified for the purposes of the schedule entry C-56 of the MVAT Act,2002. There being no specific entry for the products, they would stand covered by the residuary entry E-1, thereby taxable @12.5%.

04. PROSPECTIVE EFFECT

The applicant, in his application, has prayed that if it is held that the product is covered by the residuary entry then his liability may be protected till the date of the determination order. A prayer for prospective effect is to be seen in the light of the circumstances of the case and the position of law prevailing then. The existence of any ambiguity surrounding the provisions or, as the case may be, a statutory misguidance of any kind is to be ascertained.

From the facts of the case, it is seen that there has been no statutory misguidance in the notification. We have seen that the product referred for determination is a 'terminal' whereas the notification seeks to cover 'connectors'. The applicant's own treatment of the products 'terminal' and 'connector' as reflected in the brochure should have been helpful in understanding that his product is a 'terminal' whereas the notification covers 'connectors' and not 'terminals'. However, the applicant remained content with the understanding that 'terminals' and connectors' are the same. The description as appearing for the purposes of the notification was very clear and devoid of any mis-interpretation. Further, it was also very obvious that the notification had not taken the description as appearing in Central Excise in its entirety. The NOTE appended to the notification also clarified the position thus - *Where any commodities are described against any heading or, sub-heading or as the case may be, tariff item, and the aforesaid description is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then only those commodities described as aforesaid will be covered by the scope of this notification and other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.*

One very important thing which is to be noted is that the applicant was aware and hence, even admitted the same during hearing that the impugned products exceed the condition of amps and volts as laid down in the notification. Therefore, even if the applicant was treating his



products as 'connectors' then owing to the products exceeding the condition as specified in the notification, it should have been very clear that the products would not have qualified for coverage under the entry C-56. The position being so, the applicant's information that he has been collecting tax @4% on the sales of his product does not make out a case for favourable consideration of the request for prospective effect. Herein, I must observe that this is a sheer mockery of the process of law and an attempt to disrespect the time and efforts of this office as well as that of the Hon. MSTT. When the situation was so unambiguous, the applicant should not have followed his understanding of the rate of tax applicable to the product. In spite of simple and clear provisions, the applicant has been content with tendering arguments such as positioning of the 'comma' which I have observed to be devoid of any merit. There should not have been any difficulty in interpreting the provisions. I would say that the applicant's behavior reflects an attitude of total disregard of the provisions of the statutes applicable to the applicant's business. Hence, the applicant's request for prospective effect cannot be considered favourably.

05. In the backdrop of the above discussion, it is ordered as follows :

ORDER

(under section 56(1) & (2) of the MVAT Act, 2002)

No. DDQ-11-2011/Adm-3/19/B-5

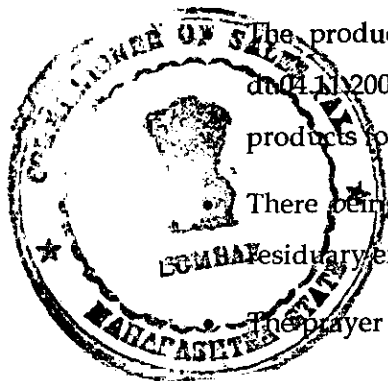
Mumbai, dt. 9/7/2013

For reasons as elaborately discussed in the body of the order, it is determined thus :

The product 'Lotus' make Copper Terminals' sold through invoice No.291/2005-06 dt.01.11.2005 is a 'terminal' and not a 'connector' as specified in the notification for IT products for the purposes of entry 56 of schedule C of the MVAT Act,2002.

There being no specific entry for the product, the same would be covered by the residuary entry E-1, thereby taxable @12.5%.

The prayer for prospective effect is rejected.




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI