

- Read :** 1. Application dt.12.6.2009 by M/s. Crompton Greaves Ltd.
2. Letters dt.15.12.2011, dt.28.12.2011, dt.11.01.2012, dt.08.02.2012, dt.22.02.2012 and dt.13.4.2012 calling details from the applicant.
3. Submission of the applicant dt.11.10.2011, dt.31.12.2011, dt.22.2.2012, dt.24.05.2012, dt.25.02.2013 and dt.08.07.2013.

Heard : Shri. Vinayak Patkar, Advocate

PROCEEDINGS

(u/s. 56 (1)(e) of the Maharashtra Value Added Tax Act, 2002.)

No. DDQ 11/2009/Adm-3/30/B-3

Mumbai, dt. 3/09/2013

An application is received from M/s. Crompton Greaves Ltd., holder of TIN 27920406939V, having address at 3rd Floor, C.G. House, Dr. Annie Besant Road, Worli, Mumbai-400 030 requesting determination of the rate of tax applicable to the product '600 VA, Pure Sine Wave Home UPS' sold through invoice no. 423526866, dated 30.04.2009.

02. FACTS OF THE CASE

The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002). The applicant has collected tax @ 4% under entry no. C-56 of the MVAT Act, 2002 read with notification No.VAT-1505/CR-237/Taxation-1, dt.17.10.2005. The applicant is of the firm view that the product is covered by the entry at Serial No. 11 of the above said notification, which reads as follows : "*Uninterrupted Power Supply (UPS) and their parts*". The dispute has arisen due to the objection raised by the Business Audit Officer. The applicant prays that the rate of tax of this product be determined under section 56(1)(e) of the MVAT Act, 2002. It is also prayed that in case of adverse determination, order be made prospective under section 56(2) of the MVAT Act, 2002. Details about UPS are given as follows :

1. In its simplest form, a UPS system consists of three elements, namely a rectifier-charger (AC to DC Converter), a battery and an inverter (DC to AC converter) interconnected.
2. Operating Modes : The three operating modes of a UPS system are -

Normal mode - In this mode the rectifier charger draws power from the AC mains and converts it into DC. This DC power is supplied to the inverter which converts it back into AC power to feed the load connected to the output of the inverter. A small amount of DC power is also supplied to the battery which is connected to the output of the rectifier charger. In this mode, the battery is said to be on float across the rectifier-charger output.

Emergency mode - This mode comes into picture when there is an interruption in the AC mains to the rectifier-charger. A voltage dip below the limit acceptable to the rectifier-charger is also taken as an interruption. The interruption causes the output of the rectifier-charger to fall. However, the input voltage to the inverter cannot fall as the battery is across the inverter input and it maintains the voltage. When the AC mains is interrupted, the source of the inverter input current gets instantaneously transferred from the rectifier-charger to the battery when the output voltage generated by the rectifier-charger falls below the battery voltage. The battery which was on float,

instantaneously goes into discharge and from then on supplies to the inverter till the AC mains resumes or the battery gets fully discharged.

Recovery mode - This mode commences when the AC mains resumes after the interruption. When the AC mains resume the output voltage of the rectifier-charger builds up and when the generated voltage of the rectifier-charger exceeds the battery voltage the input current of the inverter gets instantaneously transferred from the battery to the rectifier-charger. During this mode, the rectifier-charger not only supplies power to the inverter but also supplies charging current to the battery to restore the charge lost by the battery during the emergency mode. The battery is now getting charged. When the battery gets fully charged, the charging current progressively decreases and the battery reverts to the float mode, and the UPS to the normal mode. The duration of this mode depends on the extent to which the battery was discharged in the emergency mode, the battery specifications and the design of the rectifier-charger.

The transition between the various modes takes place without affecting the inverter input voltage or current in any manner. Therefore, the inverter output which supplies power to the critical load remains uninterrupted and transient free. Hence, the name, Uninterrupted Power Supply - UPS.

3. **Types of UPS** - A UPS can be looked at as an on-line or off-line device. There are 2 types:
 - a. **On-line UPS** - it is also known as the reverse transfer configuration of the UPS system. Here the inverter is the preferred source. The alternative source is generally the AC mains but it could also be a generating set. The load remains connected to the inverter as long as the inverter output is present and is within the specified limits. Under this condition, the system operates in the normal mode, emergency mode and recovery mode. In an on-line UPS, the output power is derived independently of the mains. This isolates the load from disturbances in the input since most voltage related disturbances are filtered out. The On-line UPS system is expensive but simpler in design. It requires high capacity components and therefore generally costlier. It is less efficient and uses battery life faster. The main advantage is that the output waveform is entirely self generated at all times and therefore even a badly distorted waveform from an engine driven generator does not reach the load.
 - b. **Off-line UPS** - This is also called the forward transfer configuration. The AC mains is the preferred source and the inverter is the alternative source of power supply to the load. Off-line UPS is best suited for locations where the power supply quality and availability is very good and the need for a backup facility is very low. It does not correct aberrations in the AC mains. The advantage of this system is high overall efficiency. This is because the inverter is not required to continuously to supply the load. Also, the rectifier charger need carry only the battery charging current and inverter no load current. Thus the system is more economical. The fact that the inverter does not turn on unless needed, reduces the stress on the battery and therefore ensures long life of the batteries. Also, such systems need to have a much smaller charging transformer rectifier and certain related circuit.

An Offline UPS is used primarily for household gadgets like fans, tubelights, computers (hence the name Home UPS) etc whereas an Online UPS is used in critical applications as in Defense, medical equipments, etc.

4. **Technical Summary**

Rectifiers - It is a system which converts Alternating Current (AC) power to Direct Current (DC) power.

Inverters - It is a system that converts DC into AC.

UPS - It is a system that takes input AC signal, converts AC to DC (Rectifier), charges the batteries & during failure of mains power; converts DC into AC (Inverter) and supplies it to the load. An UPS is a system which uses inverter technology in it.

5. Layman Understanding of UPS and Inverters

While both provide backup power during mains outage, with the UPS the switch is instantaneous (small gap) whereas with the inverter there is a long gap as compared to UPS. This gap is OK for household gadgets such as lights, fans, etc. but not OK for computers. An off-line Home UPS switches to the batteries in <10 milliseconds, after the main power has been lost. The typical Inverter changes over in about < 40 milliseconds. Home UPS uses a better sensing technology and software for faster changeover and are slightly expensive than the inverters. Uninterruptible Power Supplies (UPS) are used with sensitive equipment like computers which need a fast changeover from one power source to another in order to avoid rebooting of the computer system. If we use computer on an Inverter, there would be a gap in power for some milliseconds and the computer will reboot. This is against the norm of 'Uninterrupted Power Supply' as such we can not call a 'UPS' as a 'fast inverter'.

Since the claim of the applicant pertained to applicability of the Central Excise Tariff Heading (CETH 8504), it was brought to notice that the sales invoice does not mention the excise heading. To this, it was replied that Home UPS sold by the applicant is a trading product and hence not raising CEN-VAT invoice. The applicant is buying UPS from M/s. Litman Power System located at F-85, Industrial Area, Bahadrapad, Haridwar, Uttarakhand.

Certain queries were put forth to the applicant which were replied thus :

Q. *Whether the product sold is inclusive of cost of battery?*

A. *The product sold is exclusive of cost of battery.*

Q. *Since it is claimed that the impugned product has application in computer and other appliances i.e., T.V, Refrigerator, etc., it was queried as to the existence of separate switch for power supply to computer and other appliances.*

A. *It has two switches placed on the back panel of the product. The customer has to slide the switch as per the application.*

Q. *Whether there is sensor and relay mechanism in the impugned product? If yes, what are their functions?*

A. *There is a relay mechanism present in the product. Its function is to switch over from 'Mains' to 'Battery mode' or vice versa depending upon the signal it receives.*

Q. *Details of how the supply mechanism works in case of power availability and power failure?*

A. *Same as per the write-up reproduced above.*

Q. *What is 'normal mode' and 'UPS mode' in the impugned product and their functions?*

A. *a. Normal Mode - In this mode, all domestic applications like fans, lights, TV's can be used. Here, the changeover time is approx. 20-30 secs and switchover happens if the incoming voltage is <100V or > 280V.*

b. Other Mode - In this mode, in addition to above, computers can be used. In this case, the changeover time is < 10 secs and switchover happens if the incoming voltage is <130V or > 260V.

Q. *Whether the product in question is an online UPS or off-line UPS?*

A. *The product in question is Offline UPS. Normal and UPS modes are configured/designed with the software changes coupled with hardware. Depending upon the selection of the switch, the Home UPS would function according to the parameters set for two different modes. For e.g. the Unit would first get the input from the selection switch mounted on the backside of the product giving option to the user to choose either 'UPS' mode or 'Normal mode'. The software is fed into the DSP (digital signal processor) microprocessor chip such that if the user chooses the 'UPS' mode then switchover should happen in less than < 10ms provided the input voltage is less than 180V (+/- 5V) or more than 260V (+/-5V) the same set of logic is applicable for 'Normal' mode with*

different parameters (i.e switchover time of 20~ 30ms provided and voltage band of 100V to 280V). If the above condition exists, then DSP will activate the relay accordingly for both the modes (normal or UPS modes).

- Q. *It is informed that Home UPS functions according to the parameters set for two different modes. What are these parameters?*
- A. *The parameters fed into the DSP microprocessor chip are input voltage range and switchover time.*
- Q *Whether on the UPS mode, the impugned product can be used for computer as well as other appliances simultaneously. If the answer to the above question is yes then why it is necessary to have two modes?*
- A. *In UPS mode, the product can be used for computers as well as other appliances. In case of UPS mode, the voltage band is very less i.e. 180V to 280V. In case of typical appliances like tubelights, fans, etc., these products can withstand high voltage fluctuations as such it is recommended to use 'Normal' mode for such applications whereas in case of computers, it is better to subject it to less voltage fluctuations as such 'UPS' mode is recommended. Secondly for typical appliances like tubelights, fans, etc., the switchover time is not important as such it is recommended for 'Normal' mode whereas in case of computers applications, the switchover time is very important so as to not lose the data. Also if the product is in 'UPS' mode and appliances connected under backup are tubelights, fans, etc and if the voltage fluctuations are high, the product would switchover to 'backup' mode i.e it would start taking backup from battery for high voltage fluctuations thereby reducing the battery life as the battery would discharge and charge repeatedly. Since these appliances such as tubelights, fans can withstand high voltage fluctuations, it is better to use 'Normal' mode so as to increase the battery life as well. Thus, the option of choosing either 'Normal' or 'UPS' mode is given to the user so as to use the product depending upon the type of appliances connected under backup and the voltage fluctuations it would be subjected to.*
- Q. *What are the essential differences between a stand alone UPS and stand alone inverter? Explain their functioning for general understanding of the issue.*
- A. *Same as point 4 above about 'Inverters' and 'UPS'.*

The following difference between an 'inverter' and an 'UPS' was brought to the notice of the applicant :

UPS : The mains power comes to the UPS. The AC is converted to DC and this DC is constantly charging the battery. The output of the battery is fed to the Sine wave inverter and it converts DC to AC and this feeds the equipment. Since power out is always drawn from the battery, there is no time lag when mains switches off; it just stops the battery from being charged and the UPS continues to supply power till the battery runs out.

Inverter : The mains power comes to the Inverter. This is directly sent to the output but the AC is also converted to DC and this DC is constantly charging the battery. A sensor and relay mechanism checks whether the mains is ON or OFF. When the main switches OFF, the relay actuator triggers to switch from mains to inverter. Rest is same like UPS. Because of this sensor and relay, there is a gap between triggering.

With regard to the above difference, it was remarked that the same pertained to Online UPS whereas the product in question is Offline UPS. It was further informed that in the case of offline UPS, it only starts functioning when the mains are off and switching time is less than 10ms in UPS mode and 20-30ms in normal mode. Since the impugned product works on two modes, it becomes necessary to distinguish between the two modes and therefore, with regard to the above reply, the applicant was requested to explain the reason for lesser switch over time in UPS mode than normal mode.

03. HEARING

The case was taken up for hearing on dt.04.10.2011 when Sh. Vinayak Patkar, Advocate, Sh. Sanjay Oak, Manager Taxation, Shri. Mayur Nadkarni, Sr. Manager Technology, Shri. R.R. Suvarna, General Manager, Taxation attended the hearing on behalf of the applicant. The contention of the applicant is that the 'Home UPS' is covered by schedule entry C-56 as it is a 'UPS'. It is submitted that 'Home UPS' is basically different from inverters only in that 'Home UPS' is also helpful for computer applications whereas an 'inverter' is not. The applicant was queried about the fact that there is a computer UPS which is purely for computer applications. It was informed that the 'Home UPS' is also used for computers whereas an inverter is not. The applicant produced sale/purchase bills. The purchase bills show classification under heading 8504 which is notified under C-56. The applicant produced a detailed submission showing differences/similarities between Home UPS and Inverter. The applicant was informed that after a detailed examination of the submission, further queries, if any, would be raised. The applicant agreed to provide any replies/submissions, if necessary. Accordingly by letter dt.25.02.2013, certain details were called for.

A re-hearing in the matter was held on dt.09.07.2013 when it was submitted thus :

- a. The reply to the letter dt.25.02.2013 is being given.
- b. The applicant is neither trading nor manufacturing inverters. It was further submitted that the existence of any product by the name inverter was not known to the applicant.

The written submission dt.08.07.2013 giving reply to the queries raised by letter dt.25.02.2013 states thus -

- Q. *As schedule entry C-56 is a referential one and since it is claimed that the product is covered under the CETH 8504, it was requested to furnish excise invoice of supplier evidencing sale of 'Home UPS' under the said CETH.*
- A. *It is informed that their supplier is located in Baddi, Himachal Pradesh where excise is exempted. It is further stated that the Central Excise Tariff Head No.8504 is stated on the bill of the supplier.*
- Q. *Statement bringing out the benefits of using the product on 'UPS' mode as compared to 'Inverter mode'.*
- A. *Home UPS system comprises of AC to DC converter i.e rectifier, and DC to AC converter i.e inverter with battery being connected externally. In India, the main power supply is AC and all the appliances, fans, lights are designed to work on 230V, AC, 50 Hz supply. Home UPS has 2 modes on which it can work i.e 'UPS' mode and 'Normal mode'. There is no Inverter mode. 'UPS' mode is useful when high value electronics are in use. Because this operates, when main supply voltage goes below 180V. Now a day's most of the people are having PC & electronic item such as LCD, LED TV, etc. and to ensure proper functioning & reliability of these products, UPS mode is recommended. The Normal mode operates on 100V when supply voltage drops down below 100V this will operate and support electrical equipment such as fans, tube lights etc.*
- Q. *The impugned product has been provided with two switches. If it is basically an UPS, why an inverter option or two options are provided. If the UPS is operated on only one mode i.e. 'other UPS' mode, for how much duration will the UPS operate on 'UPS' mode.*
- A. *Two switches are provided so as to be used for different types of loads i.e UPS mode for PC's, LCD TV's etc whereas Normal mode is used for fans, tube lights etc. The duration of mode would depend upon the battery rating and amount of load being applied to Home UPS.*

- Q. An explanation as to price variation due to non-sine converter. Also elaborate on the price of a pure UPS for computers and a pure inverter i.e without UPS mode).
- A. Computer UPS are available in the range of Rs.2000/- approx. This UPS has an inbuilt battery which gives a backup of approx. 20~ 30ms and is used only for computer applications, whereas in case of Home UPS, the battery is connected externally and can give a backup of 2 to 3 hrs depending on the capacity & load being applied and can be used for different home applications like TV's, fans, light, etc.
- Q. An explanation on the point of operation duration on inverter and UPS modes i.e how many hours appliances including computers would operate and for how much time on the UPS mode and the inverter mode.
- A. In both the modes, the backup time would depend on the rated capacity of battery and the load being connected. For e.g. a typical backup time would be approx. 2 hours in case the Battery capacity is 100Ah on 800VA UPS with approx.. 80% load whereas the same backup time would increase to 3 hrs if the battery capacity is 10Ah.
- Q. UPS for computers is also available. In the present product if the product is on inverter mode, the benefit of the UPS mode will not be available. There is an option to use the UPS mode. Does it make the product an 'inverter'?
- A. No. The said product is Home UPS and can be used in both UPS mode (to primarily support computers, etc.) as well as Normal Mode (to primarily fans, lighting etc.)

04. OBSERVATIONS

I have elaborately reproduced the submission of the applicant. The impugned product is a Home UPS. The moot question before me is - *whether this Home UPS which has two switches i.e UPS mode and Normal mode is classifiable as an 'uninterrupted power supply' covered by schedule entry C-56?* It is contended that the impugned product is an 'IT Product' covered by schedule entry C-56 and is taxable @ 5%, being covered by the excise heading 8504 notified for the purposes of the aforesaid entry. The wording of the schedule entry is as below :

C-56	IT products as may be notified by the State Government from time to time.	4%	1.4.2005 to 31.3.2010
		5%	1.4.2010 to date

The description against the heading 8504 under Central Excise and the one notified for the purposes of the notification is thus :

CENTRAL EXCISE TARIFF ACT

8504	Electrical transformers, static converters (for example, rectifiers) and inductors
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MVAT ACT

8504	Uninterrupted Power Supplies (UPS) and their parts;
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It can be seen that the description under Central Excise is not taken in its entirety. Of the goods falling under Excise Heading 8504, the Legislation has sought to notify only 'UPS and their parts'. The intention being evident, the concessional rate of tax would apply only to products which are 'UPS'. Therefore, it needs to be ascertained whether the impugned product is an 'UPS'. I begin by ascertaining the facts :

1. The impugned product is referred to as 'Home UPS'.
2. It can operate fan, television, tube light and PC.
3. It is provided with two switches which provide the option of operating on UPS mode or Normal mode.
4. In Normal Mode, all domestic applications like fans, lights, TV's can be used. Here, the changeover time is approx. 20-30 secs and switchover happens if the incoming voltage is <100V or > 280V.
5. In Other Mode, in addition to above, computers can be used. In this case, the changeover time is < 10 secs and switchover happens if the incoming voltage is <130V or > 260V

The words 'Uninterrupted Power Supply (UPS)' themselves define the critical role that an UPS is called upon to play. The applicant has informed that *in case of typical appliances like tubelights, fans, etc., these products can withstand high voltage fluctuations as such it is recommended to use 'Normal' mode for such applications whereas in case of computers, it is better to subject it to less voltage fluctuations as such 'UPS' mode is recommended. Secondly for typical appliances like tubelights, fans, etc., the switchover time is not important as such it is recommended for 'Normal' mode whereas in case of computers applications, the switchover time is very important so as to not to lose the data.* What the above conveys is that the impugned product provides an option as to the need for an uninterrupted power supply or otherwise. *Is the selection of an UPS based on such requirement? And if it is so, I have to observe that it would be a mockery of the utility of an UPS.* The main motive behind using an UPS is to ensure an incessant flow of power so as to avoid loss of data or inconvenience of any kind. The impugned product when offering an option of 'UPS' mode or 'Other' mode is found deviating from the very rationale behind using an UPS. The applicant, while explaining the difference between the impugned UPS and an Inverter, has himself stated that *both provide backup power during mains outage, with the UPS the switch is instantaneous (small gap) whereas with the inverter there is a long gap as compared to UPS. This gap is OK for household gadgets such as lights, fans, etc. but not OK for computers. An off-line Home UPS switches to the batteries in <10 milliseconds, after the main power has been lost. The typical Inverter changes over in about < 40 milliseconds.* Thus, the applicant admits that in the case of the impugned product which is referred to as an Offline UPS, there is a gap or switchover time. This switchover time, it is claimed, is less than that taken by an Inverter. What is important is this switchover time that distinguishes the impugned product from an UPS. Such is not the case in an UPS which continuously powers the protected load from its reserves (usually lead-acid batteries or stored kinetic energy), while simultaneously replenishing the reserves from the AC power. This is UPS and when meant in the true sense

of an 'UPS' is always an on-line UPS. This is the utility which is expected from an UPS. No interruption is anticipated and hence, the name UPS.

The decision as to which of the systems are intended to be run by an alternative source in case of a power disruption and the capacity or the ability of such source to run the selected systems routinely are taken prior to the installation of a source, be it an inverter or an UPS. Therefore once an UPS is selected to be the alternative source, it ensures that the selected systems are run smoothly. There are no such occasions as to the UPS informing about selection of systems. Further, the option of UPS as an alternative source is chosen to run the selected system and not to make up your mind as to which of the systems to run. The decision to install an UPS is undertaken because the systems or products are such that their uninterrupted working is the need of the hour. More so their functions are such that the same cannot be suspended or deferred. It is in view of the same that the full form as the acronym UPS conveys becomes a must to the functioning of these systems. The systems or products whose functioning can be postponed are not run on an UPS. The converse is equally true when we say that an UPS is not preferred to run a system whose continual functioning is not imperative. Thus an UPS is selected for critical systems where even minute disruptions could assume mighty proportions. In the present case, the running of appliances like fans, lights, TV's can by no stretch of imagination be said to be appliances whose continual functioning merits the use of an UPS. Further the option to select a mode itself belies its use as an UPS.

From a perusal of all above data, it is felt that the Normal mode which operates all domestic applications like fans, lights, TV's is nothing but operation as per the inverter mode. Under both the modes, it has been declared that there is a switchover time of a few seconds. Thus, there is no uninterrupted power supply. This interruption, be it only for a few seconds, cannot, by any means, be said as 'no interruption'. It is a known fact that an UPS is capable of providing an uninterrupted power supply. Further, the UPS mode of the impugned product is optional. The two modes are configured with the software changes coupled with hardware. Since option is provided, it cannot be said that the product is entirely an UPS. Depending upon the selection of the switch i.e. Normal/UPS mode, the Home UPS would function according to the parameters set for the two different modes. The **'unique selling proposition'** or 'USP' of an UPS is **'no transfer time'**. An Offline UPS or an Inverter switches to battery as soon as it detects a problem. This can require several milliseconds, during which time the computer is not receiving any power whereas an Online UPS avoids these momentary power lapses by constantly providing power from its own inverter, even when the power line is functioning properly. Now what the notification

seeks to cover is an UPS i.e a continuous mode Online UPS. As far as the present product is concerned, it is strongly felt that the impugned Home UPS is an 'Inverter' in the garb of an 'UPS'. The applicant is advancing a proposition that the impugned Home-UPS is covered by the notified description 'UPS' when the fact is that the notification seeks to cover an UPS which is a continuous, unhindered protection as implicit by the use of the very words '*uninterrupted power supply*'.

I would look at yet another aspect which arises in view of the claim under the impugned schedule entry. What I say would be found all the more convincing when it is seen that the description 'UPS' has been notified for the purposes of the entry for Information Technology (IT) products. Information technology is a field wherein even slight disruptions could entail far reaching consequences. Mere advertising the product as an UPS or one designed for computer and IT would not suffice. The product has to intrinsically have such features. The impugned Home UPS is set up and programmed in such a way that it can be used for both computers and household appliances. However, I have observed above as to what is an UPS. And it is reasoned out by me that the operation of the impugned product is not in keeping with what is understood by an UPS. The product is not an 'UPS' and further when it is analysed on the basis of the entry under which claim is being laid, I have to observe that even a layman would find it difficult to establish any common thread between the impugned product and an 'IT product'. The entry C-56 pertains to Information Technology products and it means that items notified in this entry are confined to the IT sector. It is a conscious decision of the Government of Maharashtra to introduce such an entry so as to provide the needful impetus to the IT sector. Therefore, I find it intriguing to ascertain the classification of the impugned product namely H-UPS under the expression "*IT products*". As mentioned earlier, I have satisfied myself that the impugned product is not an 'UPS'. To fortify my observation, I would take up this exercise thus :

Information technology (IT) is the use of computers and telecommunications equipment to store, retrieve, transmit and manipulate data. Several industries are associated with information technology, such as computer hardware, software, electronics, semiconductors, internet, telecom equipment and computer services. In a business context, the Information Technology Association of America has defined information technology (IT) as "*the study, design, development, application, implementation, support or management of computer-based information systems*". It refers to anything related to computing technology, such as networking, hardware, software, the Internet, or the people that work with these technologies. Many companies now have IT departments for managing the computers, networks, and other technical areas of their businesses. IT jobs include computer programming, network administration, computer engineering, Web development, technical

support, and many other related occupations. Since we live in the "information age," information technology has become a part of our everyday lives. The term information technology system includes all computer hardware, software, firmware, networks, and data used for the communication, transmission, processing, manipulation, storage, or protection of information. In the 'Report of Task Force to suggest measures to stimulate the growth of IT, ITES and Electronics Hardware manufacturing industry in India', the Glossary defines 'IT services' as *IT services involve a full range of engagement types that include consulting, systems integration, IT outsourcing/managed services/hosting services, training, and support/maintenance.* The Government of Maharashtra Resolution dt.12.07.2003 regarding IT and ITES Policy 2003 mentions thus :

"In the context of the Policy, the Information Technology industry consists of IT Software, IT Hardware, IT Services and IT Enabled Services as defined below:

.....

(c) IT Services and IT Enabled Services:

These include various IT Services and are defined by the IT Task force of the Government of India as follows:

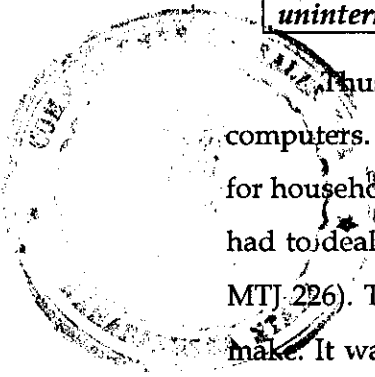
"IT Service including IT Enabled Service is defined as any unit that provides services, that result from the use of any IT Software over a Computer System for realizing any value addition".

One of the fiscal incentives of the above IT policy was - *"Charging of Sales Tax at minimum floor rate of 4% on all IT products and non-IT products essential for IT and IT Enabled Services Units as approved by the Empowered Committee."* The above information makes the situation pretty obvious as to how "Information Technology" is a term linked with the industry and not in any remote possibility associated with the products used in homes or households. Thus, it was a conscious decision of the Government to notify such products as "Information Technology" products as are necessary to augment the growth of the industry.

In a statement about difference between Online and Offline UPS, the applicant has himself mentioned one of the differences thus :

Online UPS	Offline UPS
<i>Used for mainframe or workstation computers or in applications where a uninterrupted power supply is a must.</i>	<i>Used with PCs or computers or other appliances where a power interruption for 5 ms or less does not matter when main supply fails.</i>

Thus, the applicant also unrelentingly admits that an UPS is one which is used for computers. Yet one finds the applicant harping on the fact that the impugned product used for household purposes is an 'IT product'. The Hon. Maharashtra Sales Tax Tribunal (MSTT) had to deal with a similar situation in the decision in the case of Samruddhi Industries (32 MTJ 226). The decision in this case would help buttress the observation that I am about to make. It was held by the Hon. MSTT therein that 'ghamelas' and 'buckets' are not covered by the then schedule entry C-1-29 for 'industrial inputs' even though they were covered by



an excise heading notified under it. The Hon. MSTT confirmed the determination order of the then Commissioner and held that these products are not 'industrial inputs' *per se* but are household products and therefore they would not be covered by the notification for 'industrial inputs'. It was observed that these products are not understood as 'industrial inputs' in common parlance. The present notification under consideration is for IT products. However, the HUPS is not exclusively or predominantly used in Computers and therefore, having regard to the principle laid down by the MSTT in the aforesaid case, the impugned item cannot be classified as an Information and Technology product. *By the name itself i.e Home UPS, it is indicated that the product is not meant for the IT industry but for home purposes.*

The proposition as laid down in the above case would find support if I refer herein to the Income Tax Appellate Tribunal judgment in the case of Infy Communications Pvt. Ltd. vs Department Of Income Tax on 11 November, 2010. The issue in the appeals was the order of CIT(A) in directing the assessing officer to allow depreciation @ 60% on Uninterrupted Power System. The appellant had claimed depreciation on UPS at 60% and the assessing officer allowed it at 25%. The Tribunal held that as UPS system can be only used for computers, the depreciation is allowable @ 60%. It observed,"

"We find that UPS being a supportive system for computers, which helps in absence of Power Supply, whether can be considered as part of computer. After going through the Appendix-I, table of rates at which depreciation is admissible for the assessment years 2003-04 and 2005-06, the computer is placed at clause 5(iii) of Part-A but the same has not been defined in the Act. We find that UPS is a supportive system for computers, when power supply fails, the UPS works as temporary inverter for computer to save data which is very essential part for working of computer. UPS does not work as inverter or generator but works only for 15 to 20 minutes as temporary back-up and it is only used for computers and not as inverter and generator to feed the office appliances like fans, tube-lights, air-conditioner, Television, Fridge etc. Accordingly, UPS can be considered as part of computer and fall in the same category. Accordingly we uphold the order of the CIT(A) allowing depreciation @ 60%."

The above case under the Income Tax Act has echoed the view that a UPS is used only for computers. One finer point in the above case should not escape attention that the Tribunal had categorically observed that an UPS could not be used to feed the office appliances like fans, tube-lights, air-conditioner, television, fridge etc. This is precisely the view that I am trying to put across. I am presently faced with a limited issue of whether a product by the name 'Home-UPS' could be called an 'IT product' for the purposes of schedule entry C-56 of the MVAT Act,2002. I have elaborately discussed as to how the product was not an 'UPS' in the first place and therefore could not be placed in the said entry for IT products. In view of the same, I have no hesitation to hold that the impugned product does not fall within the schedule entry C-56 for 'IT products'.

Even as I discuss this other aspect of qualification for coverage under the parent schedule entry itself, I have to hasten to observe that this aspect about not being an 'IT product' was just an additional aspect in evaluating the product. I must say that the

impugned product has failed to qualify the first and foremost test of being regarded as an "UPS". Thus not being an 'UPS', in the first place, should put to rest any arguments against my attempt to ascertain the coverage under 'IT products' and the applicability of the ratios of the aforementioned cases.

There is no other entry in any of the schedules A, B, C or D under which the impugned products could be said to be falling. In absence of any particular entry, the product would fall under the residuary entry E-1 of the MVAT Act, 2002 and will therefore be taxable @ 12.5%.

05. PRAYER FOR PROSPECTIVE EFFECT

The applicant has prayed for prospective effect in case the order is not in his favour. As has been elaborately deliberated upon hereinafter, there is no statutory misguidance in this case. Neither was there any ambiguity in interpreting law. The prayer for prospective effect fails on the aforesaid twin counts. It should not have been difficult for the applicant to comprehend that the impugned product was not an 'UPS' as contemplated by the description appearing in the notification for IT products. A case for prospective effect not being made out, I am unable to consider the request favourably. Therefore, the prayer stands rejected.

06. In view of the deliberations held above, the following order is passed.

ORDER

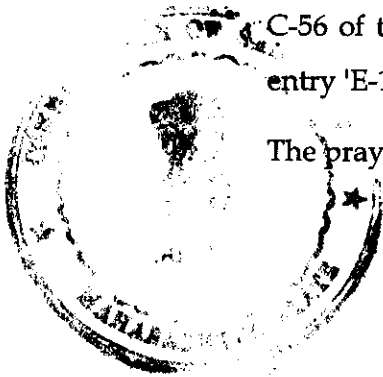
[Under Section 56(1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002]

No. DDQ 11/2009/Adm-3/30/ B- 3

Mumbai, dt. 3/9/2013

- a. The sale of the product '600 VA, Pure Sine Wave Home UPS' through invoice no. 423526866, dated 30.04.2009 would not be covered by the schedule entry C-56 of the MVAT Act, 2002. It would instead get covered by the residuary entry 'E-1' of the said Act, thereby taxable @ 12.5%.

The prayer for prospective effect is rejected.




(DR. NIRIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI