

- Read -**
- 1) Application dt.3.3.2010 from M/s. Sun Systems holder of TIN 27140012675V.
 - 2) This office letters dt.25.8.2011, dt.6.9.2011, dt.30.04.2013, dt.22.05.2013 & dt.25.06.2013 calling the applicant for hearing.
 - 3) This office letters dt.12.12.2011, dt.28.12.2011, dt.11.01.2012, dt.08.02.2012, dt.08.02.2012 & dt.25.02.2013.
 - 4) Your submission dt.14.10.2011, dt.27.12.2011, dt.27.01.2012, dt.24.02.2012 & dt.24.07.2013.

Heard - Shri. C.B. Thakar, Advocate attended the hearing on behalf of the applicant.

PROCEEDINGS

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

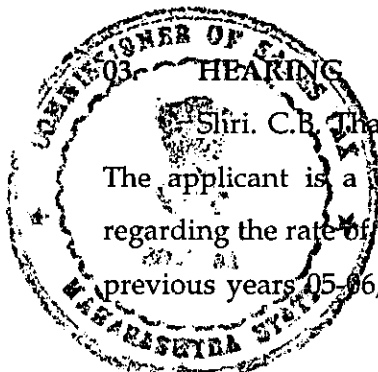
No. DDQ 11/2010/Adm-3/08/ B- 4

Mumbai, dt. 5/9/2013

An application is received from M/s. Sun Systems, having address as B-49, APMC Market-J, Mudi Bazar, Phase II, Vashi, Navi Mumbai - 400 703 requesting determination of the rate of tax applicable to the product 'H. UPS 800 S/W Falcon' sold through invoice no. 7194, dated 08.12.2009.

02. FACTS AND CONTENTION OF THE APPLICANT

The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002). Amongst others, the applicant deals in Uninterrupted Power Supply (UPS). The applicant purchases the UPS from other registered dealers who are charging 4% VAT on the same. The applicant in turn sells the said UPS charging 4% VAT. Since the UPS are usable in house also, they are described as 'H UPS' i.e., Home UPS. It is contended that the UPS are also very clearly covered by the entry C-56 read with Notification No. VAT-1505/CR-237/Taxation-1, dated 17.10.2005. The applicant is of the firm view that the product is taxable @ 4% covered by the entry at sr. no. 11[8504] of the notification issued for the purposes of entry C-56 of the MVAT Act, 2002 which is for Information Technology products. It reads as : "*Uninterrupted Power Supply (UPS) and their parts*". It is stated that there is no distinction as Home UPS and others. It is stated that in other words, all the kinds of UPS are covered by entry C-56. It is informed that in the Business Audit of the applicant, it has been conveyed that their UPS is taxable @12.5%. 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.



Shri. C.B. Thakar (Advocate) attended on behalf of the applicant on dt.03.10.2011. The applicant is a distributor of Uninterrupted Power Supply (UPS). The dispute is regarding the rate of tax of 'H'-UPS which is 'Home UPS'. The business audit authority for previous years 05-06, 06-07, 07-08 assessed the product @ 12.5% as not being covered by

schedule entry C-56 (Information Technology). Under schedule entry C-56, the heading 8504 is notified. This heading covers 'Uninterrupted Power Supplies and their parts'. It is the contention of the applicant that the Home-UPS is covered by heading 8504 though it is used for all electrical appliances. It is not an inverter but a UPS of higher capacity. The applicant states that an inverter of whatever capacity will not run a computer, but UPS is especially for computers. However, the 'Home UPS' along with computers, also can run T.V., Tube lights, fans and room coolers. Therefore, it is the contention of the applicant that though the 'Home-UPS' will run home appliances it is not an inverter but a UPS. The applicant was requested to submit the following :

1. Difference between Inverter and UPS
2. Bills of other vendors
3. Position in other States
4. Brochure of the product
5. Bills of Inverter, HUPS and digital UPS

In the submission dt.14.10.2011, it is stated thus :

- i. UPS, without any qualification is covered by entry C-56. The applicant purchases UPS of various capacities. Some of the UPS are described as "H UPS". Mention of 'H' is for marketing purpose. It denotes that the said UPS is useful in household ('H' for Home). All UPS are useful in household. However to attract customer such words are used.
- ii. In the Business Audit, the officer took a view that where the UPS are without mention of word 'H', they are allowable under above entry C-56. However where word 'H' is mentioned, the officer did not feel to allow the same under entry C-56. The exact cause of such view was not ascertainable. Therefore, being under confusion, the present application was filed.
- iii. In respect of the submissions, it is contended thus -
 - a. The UPS of all qualities are covered by entry C-56. There is no exclusion of any nature. H is mentioned for marketing purpose. The UPS and H UPS are of same utility, at the most it may be of higher capacity.
 - b. The identity of UPS is based on the fact whether it is useful in computer or not. The UPS are always associated with computer though they may be used for other purposes also. If there is any item called UPS but not useable with computer, it will not be falling under category of UPS. It may be inverter etc.
 - c. The inverter has no application to computers, so it cannot fall in the category of UPS. UPS has application in computer as well as H UPS has also application in computer. The normal UPS has also other applications like for Security System, Fax machine etc. Similarly H UPS has also application in computer and also for lights, fans and T.V. The basic nature of all these UPS is same. Thus at the most H UPS cannot be said to be a kind of UPS, with increased utility.
 - d. One more difference in inverter and UPS is that UPS gives uninterrupted supply of power. In fact power flows through UPS and therefore simultaneously there is always storing of power in the same, whereby, in case of power failure, it automatically supplies power to computer etc. This saves computer failure and there is no loss of data etc. In case of inverter there is time gap between power failure and inverter becoming operative. Therefore it cannot be considered as UPS. Also it cannot replace UPS. Even if for few seconds,

power supply is not there to computer it will fail. Therefore inverter is not useful for computers. It is only UPS which is used and such items are only identified as UPS. 'H' UPS is also usable with computer. Therefore, the item is covered by the heading 8504 and hence required to be held as covered by entry C-56.

- e. The inverter is a different category as mentioned above. In respect of inverter applicant receives tax invoices at 12.5% and similarly discharges his liability at 12.5%.
- f. In respect of H UPS applicant receives tax invoices from his supplier charging 4%. Therefore applicant is justified in charging 4% tax while selling the said H UPS. In this respect, reference can be made to the judgment of Kerala High Court in case of Accel Frontline Ltd., (37 VST 527). In this case, it is held that the classification of item in hands of manufacturer and dealer should be uniform for smooth operation of VAT. When the rate of tax in hands of manufacturer is continued at 4%, the same treatment is required to be given in the hands of this applicant.
- g. Other dealers in Maharashtra are also charging same rate i.e. 4%/5% on the H UPS. Bills of Videocon Industries Limited, Parker Power Systems Ltd. and Empire Batteries are given. One of the principles of interpretation of fiscal entries is that rate charged by other dealers is required to be considered. Reference is made to the decision of the Bombay High Court in the case of Bunge India Pvt. Ltd. (39 VST 213). In this case, Hon. High Court noticing that other dealers in bakery margarine charge 4% tax, Hon. High Court determined the rate of bakery margarine at 4%. Following the above principle in case of the applicant also rate of H UPS is required to be determined at 4%.
- h. The applicant was dealing in same item in the BST era also. He has been assessed in the said period and the sale of same item is assessed as UPS under notification entry A-131. In number of cases, it is held by Hon. Courts that the classification followed earlier is required to be continued. In this regard, reliance is placed on the following judgments.
- Merind Ltd. (135 STC 462((Bom)
 - Mayuri Yeast India Pvt. Ltd. Vs. State of U.P. (14 VST 259)(SC)
- In above judgments it is laid down that there should be consistency in classification and the classification followed for longtime should not be disturbed unless there is change in the wordings of the entry. The above principle is fully applicable to the case of the applicant.
- i. Further reference is made to the judgment in case of M/s. Ponds India Ltd. Vs. Commissioner of Trade Tax (15 VST 256)(SC). It is laid down by Hon. Supreme Court that tax should not be levied at higher rate unless warranted by Act. The applicant is covered by ratio of above judgment.
- j. It is also settled principle of law that when the item is covered by specific entry it cannot be classified under residuary entry. Reference can be made to the judgment in case of Bharat Forge & Press Industries (P) Ltd. (84 STC 414)(SC). In this judgment, the Hon. Supreme Court has held that residuary entry can be applied only if the specific entry is not applicable. In light of above principle also the classification is required to be done under entry C-56.
- k. To support that H UPS is also covered by Excise Heading 8504, invoice raised by M/s. Genus Overseas Electronics Ltd. Classifying UPS under excise heading 8504 is given.

When the item is covered under notification then it is required to be classified under the said entry irrespective of its uses, etc. The items specified in the

notification are Information Technology Products and there is no reason, nor any legal authority to interpret the same in any other way. Reference can be made to the judgment in case of Chedda Marketing (VAT Appeal No.55 of 2009 dt.24.09.2010) wherein Hon. Tribunal has held that once the item is covered in a particular Excise Heading, which is covered by Notification, it has to be held as covered by the relevant entry. It is also held that the Sales Tax Department cannot disturb the item specified by the delegate authorized under the entry. Since the item of dealer is covered by Excise Heading No.8504 which is covered by Notification under entry C-56, the item is required to be classified accordingly. It is prayed for the same.

- m. Reference is made to the judgment of Hon. Punjab & Haryana High Court in case of Goyal Motor Parts (38 VST 159) in which the very same item is classified as Information Technology Product. Thus, the issue is now well covered and it is requested to classify accordingly.
- n. In spite of above legal position, if it is concluded that the item is classified under residuary entry liable to tax @12.5% then the said order be made effective from date of order. The applicant has followed the law as per the principles of interpretation which has been settled by various courts. It may also be noted that under BST A the same item has been taxed @4% under very similar entry. Therefore there is statutory misguidance if at all the rate is now decided at 12.5%. Therefore applicant is eligible for prospective effect. Reference can be made in case of German Remedies Ltd. (A.No.97 of 1991 dt.18.5.1996) wherein Hon. Tribunal considering the previous assessments have been completed at lower rate granted prospective effect to DDQ. Similar position is arising in case of applicant and the same ratio is required to be followed. It is requested to oblige.

Through letter dt.12.12.2011 and dt.11.01.2012, certain queries were put forth to the applicant which were replied thus :

Q. Whether the product sold is inclusive of battery?

A. The product sold is not inclusive 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., is there a separate switch for power supply to computer and other appliances?

A. There are no separate switches for application for computer and others.

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

A. Applicant is basically dealer (trader) and he sells the product in the same condition as he purchases from manufacturer. Applicant has no technical knowledge much less about manufacturing aspects and its part/components, etc. Therefore applicant is unable to give any information.

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

A. Same as above.

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 the applicant is a trader and not a manufacturer, and therefore not having Excise Heading on the sale bills. However, they

have given a copy of the bill no.001452 dt.22.08.2006 issued by M/s. Genus Overseas Electronics Ltd. wherein the Excise Heading mentioned is 8542.00.

A re-hearing in the matter was held on dt.09.07.2013. Sh. C. B. Thakar (Advocate) stated that a written submission would be given in response to the aforesaid letter dt.25.02.2013. It was further submitted that the difference between Inverter and UPS was already explained. The written submission dt.24.07.2013 seeking to give 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 copy of Bill of Entry of supplier i.e Su-Kam evidencing clearance of 'Home UPS' under the Customs Tariff Heading 8504.

A. We are purchasing from Su-Kam and are unaware as to whether Su-Kam imports the same etc. We are also unable to procure such details from them as we have no control over them. Therefore, we are unable to give the details.

Q. Statement bringing out the benefits of using the product on 'UPS' mode as compared to 'Inverter mode'.

A. As per letter dt.14.10.2011.

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. We are unaware of technical details as we are basically trader and sell the goods as they are received. Therefore, we cannot clarify the issue.

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. We are dealing with UPS as purchased from our supplier and sell the same as per the price tag. Accordingly we are unable to give information on the given issue about price difference.

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. This being technical details we are unable to provide as we are only traders.

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. This being technical details we are unable to provide as we are only traders.

04. OBSERVATIONS

I have gone through the all facts of the case. The contention of the applicant has been elaborately reproduced by me. The dispute has arisen mainly because the impugned product is used for home appliances and the computer. The applicant has contended that though the impugned product is used for home appliances, it is not an inverter but a UPS. During the course of hearing the applicant contended that the impugned product is basically different from inverters only in that 'Home UPS' is also helpful for computer applications whereas an 'inverter' is not. It was informed by applicant that the 'Home UPS'

is also used for computers whereas an inverter is not. The question before me is whether the 'Home UPS' which is helpful for computer and home appliances, is covered by the description 'uninterrupted power supply' which has been notified for the purposes of the schedule entry C-56. It is contended by the applicant that the product is an 'IT Product' covered by schedule entry C-56 and is taxable @ 5%, being covered by the excise heading 8504. Heading 8504 is notified for the purposes of schedule entry C-56 and the same is reproduced as below. 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.

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

MVAT ACT

8504 | Uninterrupted Power Supplies (UPS) and their parts;

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 Legislature 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'.

The applicant is a trader and has purchased the impugned product from the manufacturer M/s. Su-Kam. The advertisement brochure of the impugned product published by M/s. Su-Kam and as given by the applicant states that the Home UPS are available in 3 varieties as follows:

OPTIONS	600 VA STURDY			800 VA FALCON			1400 VA SMILY		
	A	B	C	A	B	C	A	B	C
PC	1			1			1		
TV			1	1			1	1	
Tubelight	2	4	4	3	2	4	7	6	9
Fan	2	3	2	3	3	5	7	6	8
Room Cooler					1			1	

The applicant's product is 'H. UPS 800 S/W Falcon'. It is informed that the above 800 VA is the impugned product. The brochure states that the impugned product is ideal for equipments used by the new generation such as DVD players, monitor, printer, scanner, tube light, fans and room coolers. The product is a combination of 'UPS' and 'Inverter' and the use of the mode i.e UPS or Normal mode depends upon the selection of

the mode by the user. A look at the above chart shows that a Personal Computer i.e a PC can be operated only on one of the modes (A) of the three varieties shown above. The brochure also states that while using the impugned product for your home, it can be used for your computers also. **One important note cum instruction on the brochure states - "When PC is being operated, it is advised not to start the TV".** Now, the website of Su-Kam itself refers to the product as 'Home UPS/Inverter'. The product is referred to as an inverter while describing the feature of '*Overload Protection with Auto Reset*' :

'In case of overload, the inverter issues a warning to the user by switching "off" and "on" the power to the running appliances, the system gives the user chance to manage and identify the overload. Once the load is reduced the inverter automatically resumes its services and saves customer from physically going to the inverter and restarting it.'

The words 'Uninterrupted Power Supply (UPS)' themselves define the critical role that an UPS is called upon to play. It is seen that in the case of the impugned product -

- *the system allows the user to select the mode of operation i.e UPS or normal.*
- *the system issues a warning to the user by switching "off" and "on" the power to the running appliances.*
- *the system gives the user chance to manage and identify the overload*
- *the system gives the user chance to manage and identify the overload*

What the above conveys is that the impugned product provides an option as to the need for an uninterrupted power supply or otherwise. On indication from the H-UPS, the user decides which systems he wishes to operate with the help of the impugned product. *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 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 *operating the new generation equipments such as DVD players, monitor, printer, scanner etc. in case of power failure in a household* can by no stretch of imagination be said to be appliances whose continual functioning merits the use of an UPS.

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*'. In view of all above, I have no reservations in holding that the impugned product is not an UPS as contemplated by the notification issued for the purposes of the entry C-56. The impugned product when offering an option of 'UPS' mode or 'Other' mode is found deviating from the very rationale behind using an UPS.

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 :

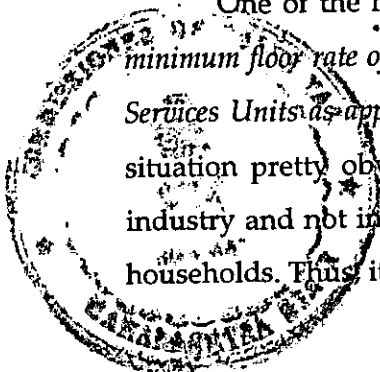
"In the context of the Policy, the Information Technology industry consists of IT Software, IT Hardware, IT Services and IT Enabled Services as defined below:

.....
(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

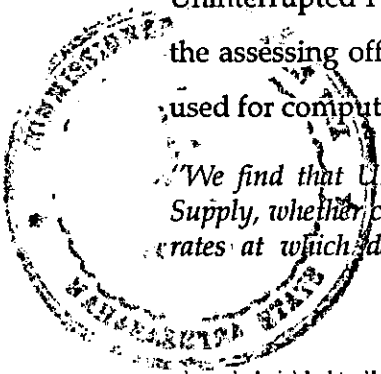


"Information Technology" products as are necessary to augment the growth of the industry.

Having seen as to what is meant by the words "Information Technology" products, I would corroborate the same with the facts of the case at hand. The website of Su-Kam itself describes the product as ideal for modern day households. The inherent use of the product as comes out from a perusal of the brochure is in *operating the new generation equipments such as DVD players, monitor, printer, scanner etc. in case of power failure in a household*. The load chart reproduced above (no. of equipments that can be run on the impugned product) and the warning indicates the use of the product as an inverter, although referred to as an UPS. But the claim of the applicant is under the entry for IT products. The options to run the number of equipments such as TV, tube light, etc suggests its basic make for home use as an inverter, though referred to as an UPS. 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 or the IT industry 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



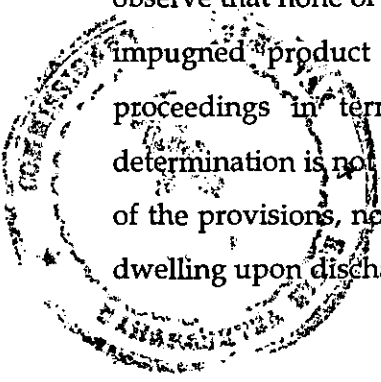
computer is placed at clause 5(iii) of Part-A but the same has not been defined in the Act. We find that UPS is a supportive system for computers, when power supply fails, the UPS works as temporary inverter for computer to save data which is very essential part for working of computer. UPS does not 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. Having determined the rate of tax applicable to the impugned product, I would deal with the cases cited by the applicant. I have perused these cases and I cannot help but observe that none of the cases are relevant to the issue at hand. I have deliberated upon the impugned product not being an UPS. The present proceedings are determination proceedings in terms of the rate of tax applicable to the impugned product. A determination is not influenced by circumstances external to the case. It is an interpretation of the provisions, nothing added nor deleted. In such circumstances, the reliance on cases dwelling upon discharge of rate of tax by similar dealers would not be of any help. Further,



I have very clearly observed that the impugned product does not fit in the basic description of "UPS" in the first place and therefore reliance on M/s. Chedda Marketing (cited supra) is inherently misplaced where the view taken was that coverage under the notification would amount to coverage under the schedule entry. The present proceedings are in interpretation of the provisions of the MVAT Act, 2002 and therefore there arises no occasion of deliberating at a higher rate than warranted under the Act. As regards reliance on M/s. Goyal Motor Parts (cited supra), the facts of the said case are different such that the decision was given on the basis of a certificate issued by the Department of Electrical Engineering, Indian Institute of Technology, Delhi and the report given by the Punjab Engineering College, Chandigarh whereas in the present case, I have satisfied myself with regard to the prevailing facts that the impugned 'H UPS' is not an 'UPS' in the first place.

In view of the above, no ratios as could be gathered from the various cases cited by the applicant could be made applicable to the facts of the impugned case.

06. 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. In terms of the other aspect too, the applicant should have known that the notification is for IT products which is a widely recognized term and therefore, the impugned product could not have been mistaken for products catering to homes rather than industries. The present product is a 'Home UPS' and not an 'IT product'. In view of the clear position, reliance on any case would not be helpful. A case for prospective effect not being made out, I am unable to consider the request favourably. Therefore, the prayer stands rejected.

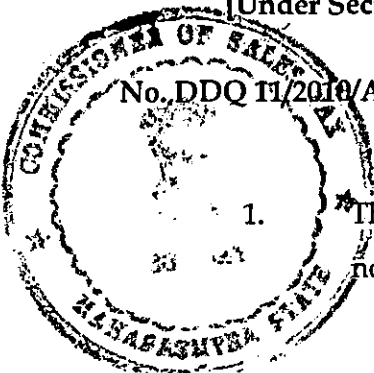
06. In view of the deliberations held above, the following order is passed.

ORDER

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

No. DDQ II/2010/Adm-3/08/B- 4

Mumbai, dt. 5/09/2013



1. The sale of the product 'H. UPS 800 S/W Falcon' sold through invoice no. 7194, dated 08.12.2009 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%.

2. The prayer for prospective effect is rejected.




(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI