

**IN THE COURT OF COMMISSIONER
DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI
VYAPAR BHAVAN, NEW DELHI**

The General Machinery Merchants's
Association (Regd.)
76, Shardhanand Marg, Delhi.

No: 225/CDVAT/2008/
Dated: 01-04-2009

ORDER

Present for the Applicant : Sh. Wahaj Ahmad Khan, Advocate
Present for the Department : Sh. T.C. Sharma, D.R.

The above named applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the question put up before this Court for determination under the aforesaid provision of law is as under:

“What is the rate of tax upon Electric Motors and Switch gears/starters which are used as a part of Machinery”

2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs.500/- has been paid through Challan No. 362525 dated 29-09-2008.

3. The applicant is a registered Association comprising members who are dealing in Machinery and Machinery parts.

4 Sh. Wahaj Ahmad Khan Advocate who appeared on behalf of the applicant, filed the following documents :

(a). Extracts from dictionary showing meaning of the word - Accessories, Components and spare parts. (b) Broucher showing Features, Application, and Specifications of

Single & Three Phase Motor .(c) Copy of book let published by Bureau of Indian Standards on 'Three- Phase Induction Motors- Specification'.(d) Photo copy of chapter one from a book titled 'Electric Drive'. (e) also submitted a written submission, which is appended as under:

“what would be the rate of tax upon “Electric Motors, Switch Gears, Starters, and Generators sets which are used as a part and accessories of plant & machinery. Electric Motors, switch Gears and Starters are basically used as a part of machinery and no machinery which is electrically and mechanically operated could work without the help of electric motor,switch Gears and starters are used as a tool for controlling the electricity supply to the machine and Generators sets are also a prime mover but in the schedule III entry no. 86 Annexure “B” Entry no.28 Electric Motors, Switch Gears, starters and Generators sets have not been specifically mentioned and only machinery parts and accessories are mentioned which creates doubts whether electric motors, switch gears, starters and Generator sets are the part and accessories of machinery. Some assessing authorities generally and usually treat them as general items or unspecific items and charge tax @ 12.5 % . hence, to remove this doubt and confusion it is requested that all the above noted items must be specifically clarified and included in the schedule of capital goods part B.”

5. The DR appearing on behalf of the Department stated that Generator in it-self is a electrical Machine for producing Electricity and has not been defined anywhere in any of the schedules to the said Act. Accordingly attracts tax @ 12.5% being an unspecified item.

6. Further, the D.R. argued that the **Sub Entry No XXVII of Entry No 86 of third schedule to the said Act** is restricted to spare parts,Accessories and Components of 'Working Machine Proper' and does not cover the 'Prime Mover' (Motor, Engine). Similarly gear is the part of the 'Transmission System'. So Electric Motors, Switch Gears and Starters which are known in the Commercial market as

Electrical goods in general are unspecified items and are therefore, taxable @12.5%. The said items, therefore, don't get covered under Sub Entry No. XXVIII of Entry No.86 of Third schedule of the said Act.

7. Having heard the arguments put forth from both sides and after perusing the documents on record the application filed u/s 84 of the Act and the relevant extracts of the Act, this Court is of the opinion that the items which are the subject matter of the present application do not find any place in any of the schedules of Act, and thus are a general unspecified items falling u/s 4(1)(e) of DVAT Act 2004 and attract VAT @ 12.5%. Held accordingly.

(Archna Arora)
Commissioner (T&T)

Copy for information and necessary action to:

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P.Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
4. The Value Added Tax Officer, Policy Branch. Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
5. Guard File.

(Archna Arora)
Commissioner (T&T)