

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

No.368/CDVAT/2014/2-87

Dated: 01.09.2014

M/s. Jakson & Company,
47, G.B. Road,
Delhi – 110006.

ORDER

Present for the Applicant
Present for the Department

: Sh. P.C. Aggarwal, Advocate
: Sh. M.K. Aggarwal, Departmental
Representative

The above named applicant filed an application on 23/07/2014 under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and the question put up for determination under the aforesaid provision of law is as under: -

"What is the rate of VAT on Diesel Generating sets?"

2. The application has been filed in the prescribed format DVAT-42 and the requisite fee of Rs.1000/- paid through Demand Draft No.002627 dated 22.07.2014 drawn on HDFC Bank, Ajmeri Gate, New Delhi-110006.

3. Jakson & Company, is a registered dealer having TIN 07840004472 under DVAT Act, 2004 and engaged in manufacturing and trading of Diesel Generating Sets.

4. Shri P.C. Aggarwal, Advocate appeared and reiterated the facts and grounds of the application and argued that Diesel Generating sets are capital goods used to provide electric power in case of failure of utility power. DG Sets are used in the industry for manufacturing of goods. Since the item 'Diesel Generating Sets' are not specified under any of the schedules, it attracts VAT @ 12.5%. He further argued that DG sets should be considered under entry 86(xxviii) of Third Schedule appended to DVAT Act, 2004 to attract VAT rate @ 5%.

[Handwritten signature]

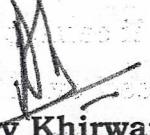


5. The DR appearing on behalf of the department stated that Entry 86 of the third schedule of the DVAT act 2004 mentioned capital goods which include machinery used in various industries. The machineries which are covered under the entry are clearly mentioned in the entry itself. The contention of the applicant is true to the extent that Diesel Generating sets are used to provide electric power in case of failure of utility power, but they are not machinery as they are not manufacturing anything they are just providing support to the machinery. Therefore, they fall under residual entry and taxed at 12.5%.
6. I have heard both the sides and of the considered view that the Diesel Generating sets are not manufacturing anything and they are only giving support to the machinery, hence, they are not covered under the intent of entry 86 of the Third Schedule appended to the DVAT Act 2004 because if it would have been the intention of the legislature then it would have been clearly mentioned in the entry itself. Therefore, Diesel Generating Sets are unspecified items taxable at the rate of 12.50% under section 4(1)(e) of the DVAT Act, 2004.
7. Held accordingly.


(Sanjeev Khirwar)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Value Added Tax Officer (Policy Branch)
5. President, Sales Tax Bar Association (Regd.)
6. Guard File


(Sanjeev Khirwar)
Commissioner, VAT

