

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

No.371/CDVAT/2014/ 358

Dated: 17-04-2015

M/s. Havells India Ltd,
681, Baba Colony,
Burari,
Delhi-110084.

ORDER

Present for the Applicant : Sh. H.L. Taneja, Adv
Present for the Department : Sh. M.K. Aggarwal, Departmental
Representative

The above named applicant filed an application on 31/10/2014 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 should be VAT rate in Delhi for sale of Electric induction motors, Switchgears and Starters, being the components of machineries for various kind of industries."

1. The application has been filed in the prescribed format DVAT-42 and the requisite fee of Rs.1000/- paid through online Reference No.420236834901014 dated 31.10.2014 of IDBI Bank Limited.
2. Sh. H.L.Taneja, Adv. Counsel of the Company, appeared and reiterated the facts and grounds of the case and requested to determine the rate of tax for Electric Motors, Switchgears and Starters manufactured and sold by the Company to their dealers/customers. The Ld Counsel also cited judgments of various courts in this regard.

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3. The brief facts of the case as per record and as explained by the applicant are as under:-

- i) M/s. Havells India Limited is a registered dealer having TIN 07740000453.
- ii) The dealer is engaged in the manufacturing of Capital goods, parts and components i.e. Electric Panels, Euro Load Changeover, By-pass Changeover Switch, Automatic Transfer Switch, Switch Disconnector, DIN Fuse base, Busbar Chamber system, Load Changeover Switch, SFU and FSU and Starters at his plants located at Neemrana, Sahibabad and Faridabad and stock transfer the goods to their depot in Delhi. From Delhi state they are selling these products to their dealers as well as to other customers. The dealers are further selling these products to the industries as well as other customers.
- iii) The dealer is presently paying tax @ 12.5%.
- iv) The dealer contented that the items are covered under entry No.86(xxviii) of the Third Schedule of the DVAT Act, 2004 and should be taxed @ 4%.
- v) The applicant further referred to the judgment of Hon'ble Appellate Tribunal, VAT, dated 27.01.2014, in the case of M/s. The General Machinery Merchants Association (Regd.) Vs. Commissioner of Trade & Taxes, Delhi, wherein it was held that

"The rate of tax upon switch gears/starters and electric motors which are used as part of machinery is well covered under sub-entry xxviii of entry 86 of the DVAT Act when r/w other entries



out of sub-entry 1 to 27 which are specifically detailed hereinabove.”

With these averments, the dealer requested to determine the rate of tax on the sale of Electric induction motors, Switchgears and Starters, being the components of machineries for various kinds of industries.

4. The DR appearing on behalf of the department stated that Entry 86 (xxviii) of the Third schedule of the DVAT Act 2004 reads as under:

Sl. No.	COMMODITY
86)	11.05.2005
	Capital goods as specified below:
(i -xxvii)	---
(xxviii)	Spare parts, accessories and components of the plant and machinery specified in items (i) to (xxvii) above.

5. In an earlier application for determination filed by The General Machinery Merchants Association (Regd.), similar issue was raised. The issue was

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

It was decided vide determination Order dated 01.04.2009 that the items are general unspecified and fall under section 4(1)(e) of DVAT Act, 2004 and attract VAT @ 12.5%.


The dealer further filed appeal before the Appellate Tribunal against the Order dated 01.04.2009 passed by the then Commissioner, VAT. The Tribunal after hearing, set aside the determination order and ordered that



"The rate of tax upon switch gears/starters and electric motors which are used as part of machinery is well covered under sub-entry xxviii of entry 86 of the DVAT Act when r/w other entries out of sub-entry 1 to 27 which are specifically detailed hereinabove."

Since the matter has already been decided by the Hon'ble Appellate Tribunal, Trade & Taxes, Delhi, so we may not take up the issue again.

6. I have heard both the sides and gone through the documents available on record and of the considered view that since the matter has already been decided by this Court in the case of The General Machinery Merchant's Association (Regd.) and also by an advanced ruling authority the Hon'ble Appellate Tribunal, Trade & Taxes, Delhi, and there is no change in the legal position since then, so this application need not to be entertained again in this Court.
7. Held accordingly.



(Sanjeev Khirwar)
Commissioner, VAT

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1. Applicant
2. Addl. Commissioner (Law & Judicial)
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6. President, Sales Tax Bar Association (Regd.)
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(Sanjeev Khirwar)
Commissioner, VAT