

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND
ADVANCE RULING**

**ACAAR No.092/ 2013-14.
Acts cell-II/38708/2013**

Dated 10.07.2014

Present:

1. Thiru. K.Rajaraman, I.A.S.,
Principal Secretary & Commissioner of Commercial
Taxes.
2. Thiru. R.Vayanaperumal,
Additional Commissioner (CT), (Public Relations)
3. Thiru. K.Mahalingam,
Additional Commissioner (CT), (Revision Petitions)

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|----|-----------------------------------|---|--|
| 1. | Name and address of the Applicant | : | Tvl. Modern Machine Tools Co., No.66(62) Devanga High School Road, Coimbatore - 641 002. |
| 2. | Registration Certificate No. | : | TIN:33921940313 / CST:570668 |
| 3. | Date of application | : | 10.12.2013 |
| 4. | Date of receipt of application | : | 20.12.2013 |
| 5. | Clarification sought for | : | Rate of Tax for Machinery, spares, components and accessories. |
| 6. | Date of Personal Hearing | : | -- -- |
| 7. | Represented by | : | -- -- |

ORDER

Tvl. Modern Machine Tools Co., No.66(62) Devanga High School Road, Coimbatore - 641 002 (TIN: 33921940313), the registered dealers in the files of R.S. Puram (East) Assessment Circle, Coimbatore, in lathe machinery, spares, components and accessories and Electric Motors manufacturing "Industrial Sewing Machine Motors" has preferred application in Form 'VV' and sought clarification under Section 48-A (1) of the TNVAT Act, 2006, read with Rule 12-A of TNVAT Rules, 2007.

2. The applicant-dealers have sought for clarification on the following:

1. Rate of tax for "**Machinery, Spares, Components and Accessories**"

(i) **On sale inside the State to industrial manufactures and to the traders in the line of distribution; and**

(ii) On sale in the course of interstate trade to unregistered dealers and registered dealers falling under section 8(2) of CST Act, 1956.

2. Electric motors – is it an accessory to machinery or not?

3. The applicant-dealers have stated that they are dealing in different types of lathe machines, its spares, components and accessories as well as electric motors. They are of the opinion that the goods dealt by them are predominantly for use in industry and hence such goods would attract the tax at the rate of 5 % as such goods fall within the scope of Entry 25 of Part-B of first Schedule read with section 2(11) of the TNVAT Act, 2006 on every sale. Whereas they have been informed that such goods would attract the rate of tax at the rate of 5 % only on sale to industry for use in manufacture of other goods inside the State; otherwise would attract tax at the rate of 14.5 % on sale to other dealers and Educational Institutions and also on interstate sales not covered by 'C' declarations as if to unregistered dealers and even to registered dealers. The applicant-dealers have enclosed pamphlets for the products they are dealing along with the application. On that strength, the applicant -dealers have sought for clarification, "What would be the correct rate of tax for Lathe machinery, spares, components, and accessories on sale inside the State to the industrial manufacturers and others as well as on interstate sales not covered by Form 'C' declarations. Besides, the applicant -dealers have also requested that they may be clarified, "whether the electric motor is eligible to be treated as an accessory to machinery?"

4.1. The issue has been examined in detail with reference to the provisions of TNVAT Act, 2006 and Rules, 2007 and Section 14 of the CST Act, 1956. The clarification is given accordingly as under:

4.2. The applicant-dealers have sought for clarification on the following:

1. **Rate of tax for "Lathe Machinery, Spares, Components and Accessories"**

(i) On sale inside the State to industrial manufactures and to the traders in the line of distribution.

(ii) On sale in the course of interstate trade to unregistered dealers and registered dealers falling under section 8(2) of CST Act, 1956.

2. Electric motors – is it an accessory to machinery or not?

4.3. It is specifically stated vide note at the bottom of the application that separate applications should have to be preferred for each commodity. Whereas, the applicant-dealers have sought for clarification regarding the rate

of tax for the Lathe machinery, its spares, components and accessories and also regarding the classification of electric motors under capital goods. The machinery and its spares, components and accessories and electric motor are classified under two distinct classes of goods liable to tax at different rates. Therefore, the clarification is restricted to in respect of rate of tax for Lathe machinery and the spares, components and accessories thereto.

5. It is the claim of the applicant-dealers that the Lathe Machinery, its spares, components and accessories dealt by them are used in the industry in the manufacture of other goods and therefore the same goods bear every eligibility to be treated as Capital Goods under Entry 25 of Part-B of First Schedule read with section 2(11) of the Act, 2006 as they have been informed so. The Entry 25 of Part-B of First Schedule to the Act, 2006 reads as under:

"Capital goods as described under section 2(11) of the Act."

The definition of the term, "Capital Goods" under section 2(11) of the Act, reads as extracted below:

(11) "*capital goods*" means, -

- (a) *plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;*
- (b) *pollution control, quality control, laboratory and cold storage equipments;*
- (c) *components, spare parts and accessories of the goods specified in (a) and (b) above;*
- (d) *moulds, dies, jigs and fixtures;*
- (e) *refractors and refractory materials;*
- (f) *storage tanks; and*
- (g) *tubes, pipes and fittings thereof,*

used in the State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government;

6.1. The analysis of the descriptions employed to describe the commodities or class of commodities in either of the Parts A and B of First Schedule to the TNVAT Act, 2006 does reveal no entry of the description,

"*Lathe Machinery, spares, components and accessories thereto*" under Part-B or Part-C. Whereas any machinery and its spares, components and accessories are eligible to be treated as 'Capital Goods' within the meaning and scope of clauses (a) and (c) of Section 2(11) of the Act and Entry 25 of Part-B of First Schedule to the Act, if such goods are sold to the manufacturing or processing industries inside the State. As revealed from the pamphlets furnished along with the application, the Lathe machines and their spares, components and accessories are used in Metal Rolling and Re-rolling mills, Grinding, Turning, Drilling, and Sheet Metal Pressing or Stamping processes of fabrication and engineering industries. The Lathe machines and their spares, components and accessories, since having industrial applications widely in the aforesaid industrial processing, bear the eligibility to be treated as 'Capital goods' liable to VAT at the rate of 5 % within the meaning and scope of Entry 25 of Part-B of First Schedule read with section 2(11) of the Act.

6.2. The pertinent point to be considered here is the expression, "***used in the State for the purpose of manufacture***" employed in the definition of 'Capital Goods' under section 2(11) of the Act, 2006. As per this expression, the machines and the spares, components and accessories of such machines, which are considered to be the capital goods for the purpose of levy of tax under Entry 25 of Part-B of First Schedule, must have been sold by the manufacturer or producer of such machines and spares components and accessories of such machines to an industrial manufacturer of other goods, either directly or through the dealers/traders (Stockist/Distributor/Sub-dealers) in the supply chain, for installation as new or on replacement in his manufacturing unit or for use in the post-installation maintenance in the manufacture or processing inside the State. The intention of having Entry 25 of Part-B of First Schedule to the Act is to provide the concession regarding rate of tax for the goods bearing eligibility to be the capital goods for manufacturing industry. Therefore, the industry specific machineries, the spare parts, components and accessories of such machineries having ultimate use only in industry either for installation as a wholesome machinery or for the post-installation maintenance and repairs, on supply to the industrial manufacturers of other goods, either directly by manufacturers of such machineries or such spare parts, components and accessories or through their supply chain, i.e., through their distributors or dealers, would attract the same rate of 5 % by virtue of Entry 25 of Part-B of First Schedule to the Act. Just because of having sold by the manufacturers of machinery and its spares, components and accessories to their buyers being the dealers in such lines for further distribution to the industry, would not alter the legal position and subject these goods for levy at the higher rate of 14.5 % construing that these goods would fall under the residual Entry 69 of Part-C of First Schedule to the Act.

6.3. Whereas the position is rather different while the machinery and the Spares, components and accessories of the machineries of ultimate industrial use as capital goods in the process of manufacture of other goods are sold in the course of interstate trade to unregistered dealers and to the registered dealers falling under section 8(2) of the CST Act, 1956, i.e., the interstate sales not covered by Form 'C' declaration. As already mentioned,

there are no specific entries with the description of the distinct kinds of machinery other than those machineries, the descriptions of which are mentioned in either of the Part-B or Part-C of First Schedule or Fourth Schedule to the Act. Hence, any distinct kind of machinery and spares, components and accessories exclusively usable in that machinery, since finds no place in either of the First or Fourth Schedules to the act, such those machinery, its spares, components and accessories, on sale in the course of interstate trade or commerce not covered by the Form 'C' declarations, would automatically attract the levy under CST Act, 1956 at the prevailed higher rate of 14.5 % as falling under Entry 69 of Part-C of First Schedule to the Act.

7. The clarification is therefore as detailed below:

- (i) **"Lathe machinery and the spares, components and accessories thereto" are liable to tax at the rate of 5 % as "Capital Goods" as per Entry 25 of Part-B of First Schedule read with section 2(11) of the TNVAT Act, 2006, on sales inside the State to the industrial manufacturers directly by the applicant-dealers or to their dealers or distributors who in turn effect the sale of same goods to the industry ultimately for use in the State for manufacture or production or processing of other goods.**
- (ii) **"Lathe machinery and the spares, components and accessories thereto" are liable to Central Sales tax at the rate of 14.5% as residual commodity classifiable under Entry 69 of Part-C of First Schedule, on sales in the course of interstate trade or commerce falling under section 8(2) of the CST Act, 1956, i.e., not covered by Form 'C' declarations, since there is no specific Entry with the above description in any of the Schedules to the TNVAT Act, 2006.**

Dated this, the 10th Day of July 2014.

Sd/- R. Vayanaperumal,
Additional Commissioner (PR)

Sd/- K. Mahalingam,
Additional Commissioner (RP)

Sd/- K. Rajaraman,
Principal Secretary/
Commissioner of Commercial Taxes

Tvl. Modern Machine Tools Co.,
No.66(62) Devanga High School Road,
Coimbatore - 641 002.

Copy to:
The Assistant Commissioner (CT)
R.S.PUram (East) Assessment Circle

The Joint Commissioner (CT),
Coimbatore Division.

The Joint Commissioner (CS)
To host in the Department Website

The Principal Secretary to Government, Commercial Taxes & Registration Department, Chennai - 9.

All Joint Commissioners (CT) including Enforcement, LTU, MOU and ISIC.
All Deputy Commissioners (CT), Territorial, Assessment and Enforcement
All Head of Offices (Assessment)

The State Representative, Sales Tax Appellate Tribunal, Chennai - 104.

The Addl. State Representative, (AB) Chennai, Madurai and Coimbatore.

The Director, CTSTI, Greams Road, Chennai - 6.

The Executive Officer, Traders Welfare Board, Chennai - 5.

The Accountant General (Audit)-II, No.44, Greams Road, Chennai - 6.

The Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Commercial Tax Officers in CCT's Office.

Personal Clerk to the CCT.

Stock File3 / Acts Cell-II / Spare - 5.

//Forwarded/By order//


Additional Commissioner (PR)