

Read: Application dt.06.03.2014 by M/s. HYT Inovative Projects Pvt. Ltd. [TIN 27820241900V].  
Heard: Sh. Vinayak Patkar (Advocate), Sh. Nagpal Vicky (Taxation Head), Sh. Prakash Patankar (STP).

### PROCEEDINGS

(under section 56 (1) (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2014/Adm 6/7/B - 2

Mumbai, dt. 21/09/2016

The applicant M/s. HYT Inovative Projects Pvt. Ltd., situated at A-138/B-21, 'H' Block, MIDC, Pimpri, Pune-411018 requests for determination of the rate of tax on the product sold under invoice No.15 dt.02.11.2015 and described thus -

**"Motor tube to ARDE Drg No 86030201040000100DF Dt.30.03.12 (Manuf. Quality Assurance & Identification mark as per Specf. No ARDE/SPECN/PINAKA Rkt .01.REV.No 6)."**

#### 02. FACTS AND CONTENTION - AS PER THE APPLICANT

The application is reproduced verbatim thus -

1. "The applicant is the registered dealer holding TIN No.27820241900 V/C.
2. The applicant is the manufacturer of pipes/tubes of different diameters
3. The supplies of the applicant are mainly to the Govt. of India.
4. The applicant purchases pipe of higher thickness and short length. The applicant, thereafter, reduces the thickness and lengthens the length. The process is a cold working process. Straight and Round pipes are made by reducing thickness. Length is increased five to six times the initial length. After increasing the length, excess and unuseful portion of the pipe is cut and threading is done. To prevent rusting zinc coating is done.

The applicant has annexed herewith following documents:

- i) Purchase Invoice (Kalyani Carpenter Special Steels Ltd.) dated 6<sup>th</sup> Dec ,2010.
- ii) Purchase Order No.FS 53280169 dated 12/12/2002 of Ordinance Factory, Ambajhari, Nagpur.
- iii) Tax Invoice T-38/10-11 dated 5/2/2011. Excise Invoice dated 5/2/2011.
- v) Write up on the process for increasing the length of pipe alongwith pictures.

The Product of the applicant falls under either of the two following competing entries:

Entry No. C-55(xi)  
Steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;

Entry No.C-72

Pipes of all varieties including G.I. Pipes, C.I. Pipes, Ductile Pipes, PVC pipes and their fittings.

7. The applicant is collecting VAT at 5% on the sales of impugned goods. However, the Sales Tax Department has now disputed the same and has expressed an opinion that the product is covered by the residuary entry E-1.

8. The applicant, therefore, requests you to determine the rate of tax on the sale of impugned product under Section 56(1)(e) of the MVAT Act, 2002.

9. The applicant further prays that it may please be directed that the determination shall not affect the liability of the applicant, in case of adverse determination.

#### PROCESS FOR INCREASING THE LENGTH OF PIPE

By using this process, pipe of higher thickness and short length is lengthened by reducing its thickness.

Short length, thick pipe

This is a cold working process for reducing the thickness of short length pipe to increase its length. Straight and round pipes are made by reducing thickness. Length is increased by 5 to 6 times the initial length. After increasing the length, excess and unuseful portion of the pipe is cut and threading is done. To prevent rusting, zinc coating is done."

Pinaka Motor Tube

Special Features

- It is manufactured by Flow Forming Process from steel SAE 4130 ESR Grade.
- Requires to be manufactured with high precision and be capable of meeting high degree of tensile and burst pressure.
- Presently being supplied to OFB, xxxx nos. supplied so far.





### 03. HEARING

The case was taken up for hearing on various dates since February 2015. However, the hearing finally took place on dt.09.12.2015. Sh. Vinayak Patkar (Advocate), Sh. Nagpal Vicky (Taxation Head), Sh. Prakash Patankar (STP) attended the hearing. The submission as made in the application was reiterated. However, they have made an ultimate claim, which it was contended as the more appropriate, of the applicable schedule entries. The claim is in respect of schedule entry C-54 under notification dt.19.09.2007 at sr. no.269 thereof. The applicant has submitted a fresh invoice dt.02.11.2015 against P.O. No. FS3150052 dt.11.07.2015. The Central Excise Heading mentioned on the Invoice is 9306. In pursuance thereof, a claim is made under the sr. no.269 wherein the Heading 9306 has been notified. The description is "*Bombs, grenades, torpedos, mines, missiles and similar ammunitions of war and parts thereof, ..... when exclusively supplied to the Ordnance Factories of the Government of India.*". It was submitted that the impugned product falls in "*parts of similar ammunition of war*". It was stated that the impugned product is a part of a rocket meant for ammunition of war. The impugned product being claimed to be a part of a rocket, an attempt was made to explain the difference between a rocket and a missile in terms of distance and control and navigational features (rocket is for short distance and has no navigation features). A written submission was promised to be given in the matter. The following documents were produced for perusal only as they are restricted/confidential documents :

1. Quality Assurance Document which says that the same is for Motor Tube of Pinaka System.
2. Method of manufacture mentioned a Drawing No. which was found on the supply/purchase order as well as on the invoice (component – Motor Tube).

The written submission dt.20.04.2016 is reproduced verbatim thus -

"With reference to DDQ application filed by the Dealer: HYT Inovative Projects Pvt. Ltd., & during personal hearing, we have stated that the dealer's Final Product is Motor Tubes which are the parts of the ammunition of war (i.e. parts of Pinaka Rocket) which are exclusively supplied to the Ordnance Factories/ARDE of the Government of India and used by the Ordnance Factories/ARDE of the Government of India in the manufacture of the ammunitions of war i.e. missiles known as Pinaka Rocket. As per the MVAT Notification No. VAT-1507/CR-60/Taxation-1 dated 19/09/2007 (Notification for addition to entry of Industrial Input) The dealer's product also gets classified under Schedule C-54 Sr.No.269 Heading No.9306 "*Bombs, Grenades, torpedoes, mines, missiles and similar ammunitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads, when exclusively supplied to the Ordnance Factories of the Government of India.*"

In modern usage, a missile is a self-propelled "precision-guided" munition system (laser guided/GPS-Global Positioning System Satellite guided/Infrared guided), as opposed to an unguided self-propelled munition, referred to as a rocket (although these too can also be guided). Rocket is not precision-guided. A Precision-Guided Munition (PGM) is a guided munition intended to precisely hit a specific target, and to minimize collateral damage. A Precision Guided Munitions [PGM] is a missile, bomb or artillery shell equipped with a terminal guidance system. It contains electrical equipment that guides it in the last phase before impact. The terminal guidance unit is designed to sense emitted or reflected EMR (electromagnetic radiation) within its field of view.

Target Acquisition (TA) systems must be used to employ a Precision-Guided Munition PGM, and include the human eye, which is the most commonly employed TA system. Others include radar, TV and forward-looking IR sensor display systems, and systems using laser guidance.

The classic target acquisition cycle is composed of the following five steps:

- (1) Detection of target area,





- (2) Detection of the target itself,
- (3) Orientation of the target,
- (4) Target recognition,
- (5) Weapon release,

Some military weapons use rockets to propel warheads to their targets. A rocket and its payload together are generally referred to as a *missile* when the weapon has a guidance system (not all missiles use rocket engines, some use other engines such as jets) or as a *rocket* if it is unguided. Anti-tank and anti-aircraft missiles use rocket engines to engage targets at high speed at a range of several miles, while intercontinental ballistic missiles can be used to deliver multiple nuclear warheads from thousands of miles, and anti-ballistic missiles try to stop them.

Hence Pinaka Rocket gets classified under *missiles & similar ammunitions of war and parts thereof*. *Motor tubes are parts of the above ammunitions of war i.e. Pinaka Rocket*.

During personal hearing we have submitted the following

- 1) Copy of Purchase Order issued by Ordinance
- 2) Copy of corresponding Excise Invoice.
- 3) Images of the Pinaka Rocket/Missile
- 4) First three pages of the Specification & Quality Assurance Plan of the Motor Tube-Pinaka Rocket issued by Armament Research and Development Establishment (ARDE) certifying the facts that Motor Tubes procured by the ARDE & Ordinance Factory are parts of the ammunitions of war Rocket/Missile's.

The entire Specification and Quality Assurance Plan of the Motor Tube-Pinaka Rocket cannot be circulated to anyone as per the agreement with the ARDE. Hence the same was not submitted.

Based on the above submissions it is clarified that the Motor Tubes are the parts of the "missiles and similar ammunitions of war".

#### 04. OBSERVATIONS

I have gone through the facts of the case. The product for determination before me is described in the invoice as being a 'motor tube'. The applicant has claimed that the impugned product would be covered under the following 3 entries under Schedule C of the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002) :

|      |                                                                                                                                       |
|------|---------------------------------------------------------------------------------------------------------------------------------------|
| C-55 | Iron and steel, that is to say,<br>(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings; |
| C-72 | Pipes of all varieties including G.I. Pipes, C.I. pipes, ductile pipes and PVC pipes and their fittings                               |
| C-54 | Industrial inputs and packing materials as may be notified from time to time, by the State Government in the Official Gazette.        |

During hearing, the applicant claimed that schedule entry C-54 of the MVAT Act, 2002 would be the more appropriate schedule entry for the impugned product and hence, all submission has been made with respect to the said entry. As can be seen, the entry speaks of a notification. The applicant has pointed out that by the Notification No. VAT.1507/CR-60/Taxation-1 dt.19.09.2007, certain entries were added to the Notification (Notification No. VAT.1505/CR-234/Taxation-1 dt.01.09.2005) for Industrial Inputs and packing material. Of the said entries, the following description is claimed to cover the impugned product :

| Heading No. | Description of goods                                                                                                                                                                                                                                                                |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9306        | Bombs, grenades, torpedoes, mines, missiles and similar ammunitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads, when exclusively supplied to the Ordnance Factories of the Government of India. |

It is seen that the applicant contends that the impugned product is covered by the words "similar munitions of war and parts thereof". The description as appearing in the Central Excise





is the same as appearing in the notification except for the following :

- The words '*similar munitions of war*' appear in Excise Tariff whereas in the notification, one finds the words '*similar ammunitions of war*'.
- The words '*when exclusively supplied to the Ordnance Factories of the Government of India*' are not found in Excise.

The second difference as pointed above can be understood as the Legislature wanting to cover only such goods from the said Tariff Heading as are sold to the Ordnance Factories of the Government of India. The first difference appears to be a typographical mistake. However, I would be quick to say that the words 'ammunition' and 'munition' though synonymously used are not so. The information as available on the Internet reveals thus -

- **Directives for Showcasing Firearms, Pyrotechnic Products, Ammunition and Munition on IDEB 2016 Fair Definitions According to the legislation of the Slovak Republic:**  
**Ammunition** is a cartridge or blank cartridge; ammunition component is also considered as ammunition. Ammunition component is a matchstick, powder or shot that are used in firearms. Forbidden firearm supplement is a shot silencer or gun sight constructed in the principles of night vision or thermovision. **Munition** is a complete equipment including parts of firearm systems and technique containing explosives, utilizing their attributes for producing the desired effect including death or injury, causing damage to property and other protected values; an uncompleted munition, munition elements containing explosives, cartridge with explosives or incendiary shot and cartridges from caliber 20mm inclusive are also considered as munition – except the pyrotechnic caliber 26,5mm.
- <http://www.differencebetween.net>  
**"Munition"** is a collective word used for "ammunition."  
 4. "Ammunition" is a term that includes; shells, bullets, fuses, and powder. On the other hand, "munition" involves everything from guns, small revolvers, medium rifles, automatic rifles, special arms, artillery guns, missiles, and bombs.  
 5. Munition is the weapons or the weapons systems used in combat, and ammunition refers to the charges needed for the weapons or the weapons systems.  
 Another description says that munition is the weapons or the weapons systems used in combat, and ammunition refers to the charges needed for the weapons or the weapons systems. For example, if a gun or rifle is the munition, the bullet used in it is the ammunition.
- **National Defence and the Canadian Armed Forces DAOD 3002-3, Ammunition and Explosives Safety Program**  
 2. Definitions  
 ammunition (munitions)  
**Ammunition means a device charged with explosives, propellants, pyrotechnics, initiating composition, or nuclear, biological or chemical material, for use in military operations, and includes a non-charged or inert replica of such a device.**

The Harmonized Commodity Description and Coding System Explanatory Notes (HSN) for the Heading 9306 also throw light on ammunition and munition thus:

"This heading includes :

(A) **Ammunition**, e.g.:

- (1) **Shells** (explosive, shrapnel, armour, piercing, star, flare, tracer, incendiary, smoke, etc.), and all other types of ammunition for guns and mortars.
  - (2) **Cartridges** of all types : blank (including blank cartridges for riveting tools or for starting compression ignition internal combustion piston engines), bulletted, tracer, incendiary, armour piercing, ball and shot cartridges for sporting guns, etc.
  - (3) **Slugs, pellets** (hollow, spherical, waisted, etc.) and darts for air, gas or spring guns, carbines or pistols, other than those for toys of Heading 95.03.
- (B) Ballistic missiles whose payload returns to the earth's surface after reaching its apogee and which impart to the payload a terminal velocity not exceeding 7,000 m/s.
- (C) **Munitions of a type which contain their own means of propulsion after launching, for example** torpedoes, flying bombs (missiles resembling aircraft), guided air missiles and **rocket type ammunition**.
- (D) **Other munitions of war, for example, land and sea mines, depth charges, hand and rifle grenades, aerial bombs.**
- (E) Harpoons, whether or not with explosive heads, for harpoon guns, etc.





(F) Parts of **ammunition and munitions of war**, for example :

- (1) Grenade, mine, bomb, shell and torpedo bodies.
- (2) Cartridge cases and other parts of cartridges, for example, bases (of brass), inner cups and inner bases and linings (of metal or paperboard) and wads (of felt, paper or cork, etc.)
- (3) Bullets and lead shot, prepared for ammunition.
- (4) Fuses (point and base detonating), whether time, percussion or proximity (electronically operated), for shells, torpedoes, etc.; parts of fuses, including protective caps.
- (5) **Mechanical parts for certain munitions, such as special propellers and gyroscopes for torpedoes.**
- (6) War-heads and buoyancy chambers for torpedoes.
- (7) Strikers, safety pins, levers and other parts of grenades.
- (8) Fins for bombs.

The heading excludes :

- (a) Propellant powders and prepared explosives, even if put up in forms ready for incorporation in munitions (headings 36.01 and 36.02); safety fuses, detonating fuses percussion and detonating caps, igniters and electric detonators, including primers for shells (Heading 36.03).
- (b) Signalling flares and rain rockets (heading 36.04).
- (c) Charges for fire extinguishers, and charged fire extinguishing grenades (heading 38.13).
- (d) Motors of Heading 84.11 or 84.12, for rockets, torpedoes and similar missiles.
- (e) Radio or radar apparatus of Heading 85.26 (see Note 2 to this Chapter).
- (f) Watch or clock movements and parts thereof, for munitions or for parts of munitions (e.g. for fuses) (headings 91.08 to 91.10 and 91.14)"

It can be seen from the above that rockets would be covered by the above Heading. The question before me now is whether the impugned product described to be a 'motor tube' is a part of a rocket.

I have to mention here that under the invoice dt.05.02.2011, the impugned product was shown as falling under the Central Excise Tariff Heading (CETH) 73049000. However, in the invoice dt.02.11.2015, the CETH is shown as 93069000. The Heading 7304 is for "*Tubes. Pipes and hollow profiles, seamless, of iron (other than cast iron) or steel*". I have mentioned earlier that the Heading 9306 as appearing under Excise is same as the one notified under the schedule entry C-54 except for the two points. With these two Headings, I have to see whether the impugned motor tube is a mere tube of Heading 7304 or a part of a rocket as falling in Heading 9306. With regard to the same, I find information thus :

- **Government of India Ministry of Defence Ordnance Factory Chanda District Chandrapur, Maharashtra – 442501-Expression of Interest for Mechanized / Automated Assembly Lines for PINAKA Rockets. At Ordnance Factory Chanda**  
[https://ofbeproc.gov.in/scripts/itt\\_pq/129PMEPQ12000003/Tech%20Specn%20Mechanised%20Assly%20PINAKA.pdf](https://ofbeproc.gov.in/scripts/itt_pq/129PMEPQ12000003/Tech%20Specn%20Mechanised%20Assly%20PINAKA.pdf)

Note : 1) All the Rocket components i.e. **Plug end, Motor tube (front), Central Sleeve, Motor Tube (rear), Stabilizer unit and Warhead** are identified with unique marking. These components are to be matched and assembled on selective assembly basis. Hence provision to read the marking is necessary to ensure assembly of correct components.

4) The scope of work may be extended to :

- i) Shifting of Integrated Rockets to a separate building for dynamic balancing. Provision for loading and unloading of the machine shall be given.
- ii) The integrated rocket which is Dynamic Balanced to be shifted to a separate building. Provision to load the Rockets on the X-ray machine and unloading after X-ray should be available. **Plug End Motor Tube (Front) PROPULSION UNIT Central Sleeve Motor Tube (Rear) PINAKA ROCKET Stabilizer Unit PRF WARHEAD Shell Explosive Complete PINAKA Rocket Assembly Five Components of Propulsion Unit Assembly** will be available on work station & to be assembled in the sequence at their pre-determined position shown below. Plug End ----- Motor Tube Front ----- Central Sleeve ----- Motor Tube Rear ----- Stabilizer unit Assembly operation sequence for proposed Mechanized Assembly Line A. ....

- **Union\_Compliance\_Defence\_Army\_and\_Ordnance\_Factories\_16\_2012\_Chap\_8.pdf**  
**Flow chart of inter-factory supplies of components/assemblies and final issue of rockets**  
OF Ambajhari





War head assembly, **motor tube** liner assembly, central sleeve assembly, plug end closing assembly, pod assembly

#### 8.2.4 Quality problems

The Ordnance Factories encountered **problems in the production of the components and assemblies** ending up in rejection of the components produced, which was attributed mainly to the design deficiencies, as mentioned below:

##### 8.2.4.1 Quality problems in warhead, **motor tube** and propulsion unit

- **Army Ammunition Data Sheets for Rockets, Rocket Systems, ...**[https://books.google.co.in/books-1992 - Rockets \(Ordnance\)](https://books.google.co.in/books-1992-Rockets)

.....The motors are composed of the following subassemblies and components.

(1) Motor tube and head closure assembly. Integral and non-integral bulkhead tubes are used with the rocket motors. The forward end of the motor tube is internally threaded to accommodate the warhead. The integral bulkhead motor tube has the motor tube and bulk closure formed in one piece by impact intrusion.....

- <http://www.ukra.org.uk/docs/youth/ModelRocketConstruction.pdf>

Making a Simple **Motor Mount** Motor mounts comprise 4 main parts:

- The fore centering ring
- The aft centering ring
- **The motor tube**
- The motor hook (sometimes called the motor retainer)

The fore and aft centering rings are used to match the size of the motor tube to the body tube of the rocket. All the thrust of the motor is transferred to the rocket through these two centering rings so they need to be of an appropriately strong but light material. The article "Materials for Model Rockets" discusses suitable materials for making centering rings. Because these two centering rings transfer the thrust they are sometimes referred to as "thrust rings"....

The aforesaid details reveal that a motor tube could be referred to as a part of a rocket. In the instant case, the applicant states that the motor tube sold under invoices submitted for the purpose of determination proceedings is a part of the PINAKA rocket. The very first details reproduced above to ascertain whether the impugned motor tube is a part of a rocket are in respect of the PINAKA rocket itself and the express mention therein "**Rocket components i.e. Plug end, Motor tube (front), Central Sleeve, Motor Tube (rear)**" should leave no doubt that the motor tube is a component of a rocket.

Once it is seen that the impugned motor tube could be a part of a rocket, I move further with the description as notified against the Heading 9306. I find that being a part of a rocket is not enough to fit in the notification. The notification also has a condition that the benefit of the lower tax bracket of 5% under the schedule entry for Industrial Inputs and Packing Material would be available ONLY when the goods as are found specified against the Heading 9306 are exclusively supplied to the Ordnance Factories of the Government of India. With regard to this condition, I find that the same is found fulfilled when we see the Supply Orders issued by Ordnance factory Ambajhari, Nagpur (signed by the Jt. General Manager/General Manager - For and on behalf of Government of India). Certain clauses from the Supply Orders could be seen thus :

**Supply Order No. FS3280169 dt.12.12.2008**

Vendor Code : HYT30045PN

Name and Address of the Contractor : M/s. HYT Inovative Projects Pvt. Ltd.,

A-138/B-21, 'H' Block, MIDC, Pimpri, Pune, M.S., PIN-411018

Name of the Purchaser : The GM, OFAJ/President of India

Indenting Department : Ministry of Defence (Non-Commercial)

Terms of Delivery : For:OFAJ

Consignee : The General Manager, Ordnance Factor, Ambajhari, Nagpur-440021, Maharashtra

Inspection :



- a) Insp. Authority : ARDE, Pune  
b) Insp. Officer : GM/O.F. Ambajhari OR his Authorised Rep.  
c) Insp. Place : At firm's premises

Description of Goods Ordered :

| Srl | Item Code  | Article/Service to be supplied                                                                                                                                                                                                                                                 | Rate Rs/Unit | Unit | Quantity Ordred | Total Cost Rs |
|-----|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------|-----------------|---------------|
| 1)  | 6730006010 | Motor tube to ARDE Drg No 8603 02 01 04 00 001 00DF Dt.30.03.12 (Manuf., Quality Assurance & Identification mark as per Specn.No.ARDE/SPECN/PINAKA/Rkt-01.Rev. No.6. The cost of the Motor Tubes expended in Tests as per above Specification are to be borne by the Supplier] |              |      |                 |               |

SIS Number :- FS1270423A  
WM/RS Pinaka Rocket

The earlier sale invoice no.T-38/10-11 dt.02.05.2011 as submitted by the applicant had the description as in the Table above. The description as per the sale invoice no.15 dt.02.11.2015, as submitted by the applicant, has been reproduced on the first page. The Supply Order No. FS3150052 dt.11.07.2015 for the aforesaid sale invoice dt.02.11.2015 has certain details thus :

**Supply Order No. FS3150052 dt.11.07.2015**

Vendor Code : HYT30045PN

Name and Address of the Contractor : M/s. HYT Inovative Projects Pvt. Ltd.,  
A-138/B-21, 'H' Block, MIDC, Pimpri, Pune, M.S., PIN-411018

Name of the Purchaser : The GM, OFAJ/President of India

Terms of Delivery : F.O.R : OFAJ

Consignee : The General Manager, Ordnance Factor, Ambajhari, Nagpur-440021, Maharashtra

Inspection :

- a) Insp. Authority : ARDE, Pune  
b) Insp. Officer : GM/O.F. & ARDE, Pune OR his Authorised Rep.  
c) Insp. Place : Final inspection on receipt of material at OFAJ

Description of Goods Ordered :

| Srl | Item Code  | Article/Service to be supplied                                                                                                                                                                                                                                                    | Rate Rs/Unit | Unit | Quantity Ordred | Total Cost Rs |
|-----|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------|-----------------|---------------|
| 1)  | 6730006010 | Motor tube to ARDE Drg No 8603 02 01 04 00 001 00DD R.No.3 Dt.30.06.08 (Manuf., Quality Assurance & Identification mark as per Specn.No.ARDE/SPECN & QAP/PINAKA/Rkt-01. The cost of the Motor Tubes expended in Tests as per above Specification are to be borne by the Supplier] |              |      |                 |               |

SIS Number :- FS1150C14C

PF & The Warhead (Empty) and Propulsion Unit (for static firing)

Material Description: Motor tube to ARDE Drg No 8603 02 01 04 00 001 00DF

1.....

5. Motor tube are to be zinc plated as per Fe/Zn 12.5 with supplementary treatment type C and further to be protected by laquer (Ref.specification IS:1573-1986) Rep. Sample to be subjected to salt spray testing as per IS:9844 1981.

The applicant has informed that the motor tube is prepared as per the Specification and Quality Assurance Plan. We see that the Supply Order also insists on the motor tube being made as per the Drawing by Armament Research & Development Establishment (ARDE). What all above infers is that the impugned transaction of supply of motor tube has been effected to comply with the Supply Order placed by the Ordnance Factory, Nagpur. The above findings would also clear the issue as to whether the impugned product would fall in the Heading 9306 or the Heading 7304. The impugned motor tubes are specially manufactured as a part of the Pinaka Rocket for the Ordnance Factory. In view thereof, the classification under 9306 when manufactured to specification as being a part of a rocket is appropriate. It therefore follows that the motor tube being a part of the PINAKA Rocket and further having been supplied to the





Ordnance Factories of the Government of India, they would be covered by the description against the Heading 9306 as has been notified for the purposes of the schedule entry C-54 of the MVAT Act,2002, thereby attracting tax @5%.

However, I have to be quick to point here that if the applicant supplies the motor tubes to any other party other than the Ordnance Factories of the Government of India then the benefit of the notification under the schedule entry shall not be available.

I need to deal herein with yet another aspect and which is the claim laid to by the applicant to other schedule entries. We have seen above that the impugned product is not one of the types as are easily available off the shelf. The product is prepared with guided and detailed specifications requiring precision. The product is prepared with the full understanding that it is to be a part of the rocket. In the circumstances, it cannot, without a doubt, be said to be a 'pipe' as found in schedule entry C-72 of the MVAT Act,2002. I have to stress here that the impugned product is not a mere pipe but a motor tube satisfying the specifications as are required to enable it to perform its function as a part of the rocket. I find the other claim to be in respect of the clause (xi) [*steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;*] under the schedule entry C-55 of the MVAT Act,2002. We are all well aware that the schedule entry C-55 is based on the goods as mentioned in section 14 of the Central Sales Tax Act,1956 (CST Act). The said section is for '*goods of special importance in inter-State trade or commerce*'. The commodities considered to be so are certain cereals, coal, cotton, crude oil, iron and steel, sugar, liquefied petroleum gas for domestic use, etc. Each of the aforementioned commodities are properly specified. Section 15 of the CST Act specifies the restrictions and conditions with regard to tax on sale or purchase of declared goods within a State. The restriction with regard to tax rate is such that the Sales Tax laws of a State shall not impose a tax on these declared goods at a rate higher than the rate for these goods as specified under the CST Act. I bring attention to this aspect of 'declared goods' as a part made to specification could not have been enumerated under "*Iron and Steel, that is to say-*" as being important in inter State trade or commerce. Even without embarking on the discussion as to whether the impugned motor tube could be a steel tube as described in clause (xi), I would say that it cannot be lost sight of that the steel tubes as are enumerated in the clause (xi) are the general purpose steel tubes and not the impugned "made to specification and precision" motor tubes designed to serve as a component of a rocket. In view thereof, I have to categorically observe herein that the claim of the applicant as regard the impugned motor tube being covered by the schedule entries C-55 and C-72 of the MVAT Act,2002 was misplaced.

Having seen thus, I find that there arises no occasion to discuss about protecting the liability of the applicant has been collecting tax @5% and we have seen that by virtue of being covered by the schedule entry C-54 of the MVAT Act,2002, the impugned product attracts tax @4 (upto 31.03.2010)/5% (from 1.4.2010 to 31.03.2016)/5.5% (from 1.4.2016 onwards).





05. In view of the deliberations as at above, I determine thus -

**ORDER**

(under section 56 (1) (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2014/Adm 6 /7/B - 2

Mumbai, dt. 21/09/2016

The transaction as effected under invoice No.15 dt.02.11.2015 of supply to Ordnance factory Ambajhari, Nagpur, of the product as described hereinbelow, attracts tax @5% being covered by the description against Heading 9306 as notified for the purposes of the schedule entry C-54 of the Maharashtra Value Added Tax Act, 2002.

"Motor tube to ARDE Drg No 86030201040000100DF Dt.30.03.12 (Manuf. Quality Assurance & Identification mark as per Specf. No ARDE/SPECN/PINAKA Rkt .01.REV.No 6)."



  
(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,  
MAHARASHTRA STATE, MUMBAI