Read: (1) Application dt.28/9/2006 filed by M/s. R.K. Rim Pvt. Ltd., holder of VAT TIN N0.27310369978 V, dt.1/4/2006.
(2) Application dt.11.12.2007 filed by M/s. R.K. Rim Pvt. Ltd., holder of VAT TIN N0.27310369978 V, dt.1/4/2006.
(3) Additional submission given by the applicant on 29/3/2007.
(4) Additional submission given by the applicant on 27/6/2007.
(5) Letter dt.3.12.07 sent by this office to the applicant.

Heard: Shri A.B. Ghanekar, STP on behalf of the applicant.

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PROCEEDINGS

(U/s 56(1)(e) of the Maharashtra Value Added Tax Act, 2002.)

No.DDQ-11-2006/Adm-3/83/B- 3 **Mumbai, dt. 17.12.2007**

An application desiring determination on the rate of tax on 'E-Bike- Matrix' sold vide invoice No.0064, dt.14/10/2006 is preferred by M/s. R.K. Rim Pvt. Ltd. having address as 'Unit No.1, Bittu Industrial Estate, Waliv Village, Vasai (E)'.

2. FACTS OF THE CASE

1) The applicant had applied for determination on the rate of tax on 'E-Bike- Snappy 2.4' sold through invoice No 0001 dt.29.8.06. The applicant had maintained that the product sold by him is not a 'motor vehicle' and, in support of his stand, has submitted the certificate of the Automotive Research Association of India certifying that 'e-bike matrix' is not a motor vehicle.

2) It was observed by this office that the ARAI certificate was with regard to a different model 'Matrix' while the invoice showed the sale of 'e-bike Snappy 2.4'. Accordingly, a letter dt. 3.12.07 was issued to the applicant by this office, bringing the aforesaid fact to his notice. It was also informed that the applicant either produce the ARAI certificate for ' Snappy 2.4' or the sale invoice of 'Matrix' and, in case the applicant opted for the latter, submit a fresh application for determination on 'Matrix' as the determination application was on 'Snappy 2.4'.

3) The applicant, in accordance with the letter, opted to produce the sale invoice of 'Matrix' and accordingly submitted a fresh application for determination with respect to 'model 'Matrix' on 11.12.2007.

4) The information given in the application is as under :

- The product submitted for determination is an e-bike. The applicant manufactures electric bicycles in the manufacturing unit at Vasai in Thane District. It is informed that such bikes are being manufactured in foreign countries like China, Korea and the technology is now developed in India. The product described as ,"E-bike Matrix" is a Bicycle which runs on electric battery.

- It is stated that it is a bicycle where battery is provided in the cycle which is required to be charged. The battery generates electricity which is a source of power for running the cycle. There is no engine fitted in the cycle. The cycle also has pedals. It is also informed that the product in question is Eco-friendly as no pollution is created. No petrol, diesel, CNG or LPG Gas cylinder is required for running the cycle. Only electrical energy gets consumed for running the cycle. The cycle also has pedals and it is open to the person either to use pedals or electrical energy.

3. CONTENTION OF THE APPLICANT

It is contended by the applicant that the 'Matrix' is not a 'motor vehicle' but a 'bicycle' covered by schedule entry C-14 of the MVAT Act, 2002 and taxable @ 4%.. While placing this contention ,the applicant has placed reliance on the Supreme Court judgment in the case of 'Porritts and Spencer (Asia) Ltd. (42 STC 433) where considering the development in technology the Supreme Court held that 'Dryer Felt' is 'Textile' even though the process of Warp and Woof pattern is not involved. It is argued that though it is true that an aerodynamic shape is given to this cycle, these things will not change the basic character of the cycle. The applicant has contended that they are of the firm view that the product is nothing but a 'Bicycle' covered by schedule entry C-14 of the MVAT Act, 2002. It is also stated that 'Bicycle' are used in rural areas, villages etc. and therefore a lower rate of tax should be fixed. Relevance is also placed on MSTT decision in the case of Neutron. In that case, the telephone having an added facility of speaker phone was held as a Telephone.

4. DOCUMENTS ATTACHED WITH THE APPLICATION

1. Test Report of the Automotive Research Association of India. As per the report, the 'Test vehicle Model Matrix' was held as not being a motor vehicle for compliance to CMVR requirements as per the exemption criteria specified in GSR 589(E) dt.16/9/2005.
2. Product literature of the product.

The applicant was earlier called for hearing on 27/2/2007 and was accordingly heard by the erstwhile Commissioner of Sales Tax. As a consequence of the hearing, the applicant was asked to submit a technical note explaining the working of the 'E-Bike Snappy 2.4' and also submit a technical note explaining the difference between a cycle and motor cycle/moped. Accordingly, Shri A.B. Ghanekar, submitted a written report on 29/3/2007 in which he has produced a certificate from the Automotive Research Association of India certifying that the 'Matrix' is not deemed to be a motor vehicle. The applicant also produced a notification dt.16/9/2005 issued by Department of Road Transport and Highways by which Central Motor Vehicle Rule-2005 were amended. By the amendment the following clause has been added to the Rules :-

> "Battery Operated Vehicle" means a vehicle adopted for use upon Road and powered exclusively by an Electric Motor whose traction energy is supplied exclusively by traction Battery installed in the vehicle. Provided that if the following conditions are verified and authorised by any testing agency specified in Rule 126 ,the battery operated vehicle shall not be deemed to be a motor vehicle.
>
> **1)** The thirty minute power of the motor is less than 0.25 K/w.
>
> **2)** The maximum speed of the vehicle is less than 25 Km./Hr.
>
> **3)** Bicycles with pedal assistance which are

a. equipped with an auxiliary electric motor having a 30 minute power less than 0.5 K/W whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 Km/Hr., or sooner if the cyclist-stops and peddling. and

b. Fitted with suitable brakes and retro reflective devices i.e. one white reflector in the front and one red reflector at the rear.

The applicant again filed an additional submission on 27/6/2005. He also enclosed an opinion given by Mr. V. R. Mahashabde, B.E. Mechanical of Thane. In addition to the above opinion the applicant has also enclosed certificate given by five people who have certified that 'E-Bike Snappy 2.4' is a bicycle which is used by children. The opinion given by Mr. Mahashabde gives the differences between 'E-Bike' and the 'Moped' in the following manner.

E-Bike	*Bicycle*	*Moped*
Operates on Battery driven motor with 250 or less wattage	Pedal operated	Runs only on Fue converted to gasoline.
Can be operated by pedals in case of battery discharge	Only pedal operated -no other way	Only Engine operatec on Fuel.
Light in weight	Light in weight	Heavy in weight
Speed limit 20-22 km/Hr	Speed limit 20-22 km/Hr	Speed limit 50-6 km/Hr
Registration & License not required	Registration & License not required	Registration & Licens required

5. HEARING

The case was fixed for hearing on 6/11/2007. Shri A.B. Ghanekar, STP attended on behalf of the applicant. He contended that the product is not a motor vehicle. He contended that the product under consideration is a cheaper variety of bicycle and is covered by schedule entry C-14. He also contended that it is not a motor vehicle but a bicycle with pedal assistance.

6. DECISION

I have gone through the facts of the case. As mentioned elsewhere in this order, the applicant, following the letter dt. 3.12.07 issued by this office showing the discrepancies in the application, submitted a fresh application for determination requesting determination on 'Matrix'. Accordingly, in this order, the application dt. 28.9.06 requesting determination on 'e-bike snappy 2.4' is rejected, and, in its place, the application submitted on 11.12.07 is taken up for determination u/s 56(1) (e) of the MVAT

It is contended by the applicant that the product is a 'bicycle' covered by schedule entry C-14 of the MVAT Act, 2002. Due to the apparent similarity of the product to a 'motor cycle', there was the issue whether the impugned product is a motor vehicle or not and the similarity and the differences between the product and motor vehicle was sought to be clarified. Accordingly, the applicant produced the certificate given by the Automotive Research Association of India as also the extract from the Central Motor Vehicle Rules. There are therefore two probable classifications to be considered and

- Whether the product is motor vehicle? In which case it would be covered by the residual entry as there is no schedule entry for motor vehicle under the MVAT Act.
- Whether it is a bicycle covered by schedule entry C-14 of the MVAT Act, in which case it would be taxable @ 4%.

Let me first have a look at the product under consideration for a proper appreciation of the facts. The applicant has furnished the photograph of the "Matrix' model, the features of which are described as follows:

SPECIFICATIONS	SPECIAL FEATURES
Standard load capacity	Attractive ,affordable and useful for entire family.
Weight 60 kg	Having aerodynamic shape, elegant look.
Max speed : < =25 km/hr	Can travel up to 100 kms per charge.
Gradability : 6 degrees	Travel 100 kms in Rs 7.
Charging time : 6 hrs	Eco friendly
Rated voltage :48V	No fuel required.
Input voltage of charging :220V	No registration

Running distance per charge :100 kms	No driving licence
Maintenance free	Powerful Headlights
Charger : 220V.CE	String shock absorbers
Battery :sealed lead acid	Maintenance free
	Available in attractive colors
	Comfortable and easy to drive
	No hassle of changing gears.

The applicant has also furnished the product literature of the other products manufactured by him. The features are given as under :

- The vehicle runs on electric battery.
- The said battery is required to be charged and the battery generates electricity which is a source of power for running the cycle.
- There is no engine fitted in the cycle.
- The product also has pedals.
- No petrol, diesel, CNG or LPG is required for running of it.
- It is open to the person either to use battery or electrical energy.
- It has a maximum speed of 17.8 Km/Hour.
- With the assistance of peddle the maximum speed i.e. achieved is less than 21 Km/hr.
- In one charge it can run for about 45 to 50 Km.
- It is light in weight.
- No registration and licence is required under the Central Motor Vehicle Rules.

a) WHETHER MOTOR VEHICLE ?

There is no schedule entry for motor vehicle under MVAT Act and in case the product is held as motor vehicle it may be classified under schedule entry E-1 would be taxable @ 12.5%. The applicant has contended that the product is not a motor vehicle and in support of the contention has relied heavily on the test report given by the ARAI which is a government recognized institute which certifies vehicles after testing them against the conditions prescribed by the Central Motor Vehicle Act and Central Motor Vehicle Rules (referred to as 'CMVR') . As the certificate is granted in accordance with the norms prescribed under the CMVR, let me first have a look at the relevant amendment made in the rule.

The aforementioned rules define a ' battery operated vehicle ' and 'bicycle with pedal assistance.'' The rule is reproduced below:

"Battery Operated Vehicle" means a vehicle adopted for use upon Road and powered exclusively by an Electric Motor whose traction energy is supplied exclusively by traction Battery installed in the vehicle. **Provided that if the following conditions are verified and authorised by any testing agency specified in Rule 126 the battery operated vehicle shall not be deemed to be a motor vehicle.**

1) The thirty minute power of the motor is less than 0.25 K/w.

2) The maximum speed of the vehicle is less than 25 Km./Hr.

3) Bicycles with pedal assistance which are

a. equipped with an auxiliary electric motor having a 30 minute power less than 0.5 K/W whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 Km/Hr., or sooner if the cyclist-stops and peddling. and

b. Fitted with suitable brakes and retro reflective devices i.e. one white reflector in the front and one red reflector at the rear.

The certificate given by the ARAI is on the model 'Matrix' which is described as 'Electric Two Wheeler with pedal assistance.'' As per the results conducted the following observations were made.

Sr.No.	*Test details*	*observations*	*CMVR requirements*
1.	30 Minute power of vehicle	218W	Less than 250 W
2.	Maximum speed of vehicle	21.1 Km/hr.	Less than 25 km/hr
3.	Maximum speed of vehicle with peddle assistance	Less than 25.4 Km/hr.	
4.	Fitment of breaks	front; drum type rare; drum type	Fitted with suitable brakes
5.	Fitment of retro reflectors	front; white rare; red	Fitted with retro reflective devices

After conducting the test against the parameters given above, the ARAI came to the conclusion that the 'Matrix' is not deemed to be a 'motor vehicle' for compliance to CMVR requirements as per the exemption criteria specified in GSR 589/E dt.19/8/2005. It is pertinent to note that the certificate is given for a specific model i.e the 'Matrix' model. Whereas, the models sold as per sale invoice is the ‘ E-bike snappy 2.4 ‘model. However, the test report is with respect to the ‘Matrix’ model, and not with respect to the ‘e-bike snappy 2.4 model.’ Therefore ,irrespective of the sale invoice, I would confine myself to the determination on the rate of tax on the 'matrix' model. The other model ,’’ E-bike snappy 2.4’ , the sale invoices of which are submitted, is not tested against the conditions given under the CMVR rules and therefore, as no certification has been obtained for them, I shall refrain from determining their classification under the MVAT Act.

The conclusion given by the ARAI is as per the provisions made under the Central Motor Vehicle Rules which are referred to under the test report. The Central Motor Vehicle Acts and Rules define motor vehicle and the incidental provisions for licence, registration etc. Though the definition and classification of a motor vehicle under the MVAT Act is not referential to the Central Motor Vehicle Acts or Rules, it also cannot be denied that the treatment accorded to a product under the Central Motor Vehicle Acts or Rules and the ARAI is an important defining factor. I therefore cannot overlook the certification given to the applicant by the ARAI and therefore come to the conclusion that the product 'matrix' is not a motor vehicle. I , therefore, hold that the ‘Matrix’ model is not a ‘motor vehicle.

However, at the same time, I cannot disregard the fact that the model has been described as 'Electric Two wheeler' and not a 'bicycle'. It is observed that the CMVR rules define a battery operated vehicle as a 'vehicle adopted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle' and such a battery operated vehicle is considered to be motor vehicle for the purpose of Motor Vehicle Act except under some conditions. Only in certain cases where the norms provided under the rules are fulfilled then a vehicle is not deemed to be motor vehicle. In case, a battery operated vehicle has a 30 minute power or more than 0.25 KW or has a speed of more than 25 Km/hr. then it would be a motor vehicle. As the product under consideration has maximum speed of less than 25 Km/hr. and 30 minute power of less than 250W it is not deemed to be a motor vehicle. This is a deeming fiction provided in the Act which lays down that, under certain circumstances battery-operated vehicles and bicycles with pedal assistance are not deemed to be motor vehicles. In other words, this also implies that battery operated vehicles are 'motor vehicles', but for certain conditions. The implied meaning and the deeming fiction point to one thing- battery operated vehicles and bicycles with pedal assistance are, except under some circumstances are considered as 'vehicles'. The said implication is important to the issue in hand.

b) WHETHER BICYCLE?

Now I will deal with the applicant's contention as to whether the product is a 'bicycle' covered under schedule entry C-14 taxable @ 4%. The relevant schedule entry is reproduced below:

C-14	Bicycles, tricycles, cycle rickshaws and parts, components and accessories and tyres and tubes thereof	4%	1.5.2005 to till date

As the ARAI report is on the matrix bicycle 2.4, I would confine myself only to passing the determination order on whether the 'matrix' is a bicycle or not.

The entry C-14 expressly covers only 'bicycles', tricycles and cycle rickshaws. The product under consideration is an electric bicycle and is also known as 'E-Bike'. Whether such an 'electric bicycle' is a bicycle? I do not agree with the proposition. An electric bicycle is not a simple 'bicycle', both technically and also as understood in common parlance. I would deal with the technical differences first.

- The distinguishing factors between them are many. First and foremost, the electric bicycle is powered by electric power, while a conventional bicycle is not - the pedal is only an option in case of the former, while it is the only source of power in the latter.
- The 'matrix' therefore runs on two kinds of power. The electrical energy generated by the battery or the mechanical energy generated by the pedaling action. A normal bicycle, as is

commonly known is driven only by the mechanical energy generated by the pedaling action.

- A bicycle is necessarily identified by the pedals and the pedaling motion is the energy which drives the bicycle. This is the unique facet which distinguishes the bicycle from the rest of the two wheelers. It would be simplistic to call anything with two wheels as a bicycle. In that case, the rest of all two-wheeled vehicles like mopeds, motor cycle, which, though apparently bicycles because they also have two cycles, would be called bicycles. Mopeds and motorcycles, though having two wheels, are not bicycles. ***This is because they run on a different source of energy.***
- The energy driving the electric bicycle is the electrical energy. ***The pedals are only an option***. In such a case, the unique factor distinguishing a bicycle from the other two vehicles with two wheels is missing and therefore, it cannot be a bicycle.
- Also, the product is described as a 'battery operated vehicle with pedal assistance' and as an 'Electric two wheeler ' by the ARAI. This implies that the main source of power is the electric power and the pedal is only used in emergencies when the battery runs out.

The Annexure to the ARAI report contains the pictures of the model which was tested giving the 'front view', rear view and the side view of the vehicle. It is seen that the product comes in various colors and shapes and has the look of a scooter and moped. It is seen that the model has the following features :

- Headlights
- Blinkers apart from Retro –reflective devices.
- Alloy wheels

The applicant has also furnished the photographs of the 'e-bike snappy 2.4model.' From the photographs, it is observed that the models- Matrix and e-bike snappy 2.4 are similar. The 'e-bike also has similar features. From the picture of the product provided by the applicant as also the information given, it is seen that the product does not resemble a common bicycle. It resembles a 'scooty' more than a normal bicycle. A bicycle is always pedal driven.

The **bicycle**, **bike**, or **cycle**, is a pedal-driven, human-powered vehicle with two wheels attached to a frame, one behind the other.An 'e-bike' is technically different from a 'bicycle' and moreover, even in common parlance, the 'e-bike' would not be perceived as a 'bicycle.' The 'common parlance test' is of paramount importance in the present case. In the application of this test, I would just rely upon the picture of the said product produced by the applicant. The picture does not, in any way, resemble the picture, the word 'bicycle' would conjure. Also, if a person wishes to buy a bicycle, he would have a certain budget in mind. Therefore, when he steps out to buy a bicycle he would certainly not buy an electric bicycle. In fact, he would not be able to afford the electric bicycle at all! The electric bicycle does not look like a bicycle as it is not a bicycle.

The applicant has relied upon the decision in the case of M/s Porrits and Spenser (cited supra) in order to drive home the point that allowances have to be made for techno logical innovations in classification. While certainly agreeing with it, I also believe that a certain line has to be drawn before providing any such allowance for technological innovations. It is a known fact that motorcycles were an innovation over cycles. Motorcycles were first created by doing nothing more than adding an engine to a bicycle. Not long after the first bicycle was introduced at the end of the nineteenth century , it was felt that it was just not fast enough and an engine was strapped on the bicycle and the motorcycle was invented. The inventors of the motorcycle were William Harley and Arthur Davidson, whose motorcycles are so coveted and popular today. Thus, though a motorcycle is an enhanced and improved form of a bicycle it is not considered as a 'bicycle' and I am certain that no swords would be drawn if I say that ' bicycle ' is not a 'motorcycle' even though the latter is derived from the former. The same applies to an 'e-bike'. It is derived from a bicycle and is not, by itself, a bicycle.

The 'electric two-wheeler' bicycle does share certain attributes with the common bicycle. But the addition of a battery operated motor to the common bicycle gives it a entirely different identity, price, use from the normal common bicycle. It is not a normal, conventional bicycle. Within the four corners of the law, or more correctly, within the limitations of the entry which only covers 'bicycle' by which I am constrained, I cannot hold the impugned product as a 'bicycle. The e-bike has been around for a long time and popular in many countries. The origin of the product begun in the 19th century when experimentalists begun attaching stream engine to tri-cycle and quadri-cycle. Thereafter, the development diverged into two distinct streams -motor cycle which are driven by engine and the e-bike. The e-bike is therefore a completely different branch in bicycle making which runs parallel with the development in motor cycle. A common bicycle also can be converted to a electric bicycle. This shows that the bicycle and the e-bike are two different products. The modern electric bicycle can be said to be true to the concept of a pedal bicycle but it is not itself wholly a pedal bicycle. The concept may be the same but the form is not.

Bicycle is taxed @ 4% under the Act. It is classified so as it is used by the common segment of the population. Every classification under the taxing statute and the rate attributed to it is defined by certain norms of equality and equal distribution of resources. When bicycle is taxed @ 4% the benefit is meant to be given to a certain class of the population. Common bicycles are priced in the range of Rs.4,000/- to Rs.5,000/- while the product in question is priced much higher. The benefit extended to common bicycles is given with a certain design in mind and, while classifying any product in the category of cycles, I cannot overlook these considerations.

7. In view of the deliberations given above, I pass the following order.

O R D E R

(Under Section 56(1) (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2005/Adm-5/20/B-3 Mumbai,dt. 17.12.2007

The sale of 'E-Bike- Matrix' sold vide invoice No.0064, dt.14/10/2006 is held to be covered by schedule entry E-1 and is thereby, taxable @ 12.5%.

(Sanjay Bhatia)
Commissioner of Sales Tax,
Maharashtra State, Mumbai