Read:- 1. Application dt. 29.8.2006 from M/s. S.K.Industries, holder of VAT Tin No. 27600347654 (V)
2. This office letter dated 13.2.2007 calling the applicant to hearing on 20.2.2006.
Heard: Shri Ashok Chandak Chaertered Accountant attended the hearing on 21.2.2007.

PROCEEDINGS

(Under section 56 (1) (d) & (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-06/Adm-5/67/68/B-7 Mumbai,dt. 30.4.2007

This is a set off of two applications from M/s. S. K. Industries of E-33, M.I.D.C. Area, Ghugus Road, Chandrapur - 442 406 requesting determination as follows:

Sr. No.	Commodity/Issue	Determination sought
1	Grey Falcon Pavers (Interlocking Paver Blocks) [Invoice No. 19 dt. 1/8/2006]	Applicable rate of tax
2	Supplying & Laying of Paver Blocks on sand bed with joints filing sand and edge restrained [Invoice No. 35 dated 8.12.2006]	Sale price for levy of tax and rate of tax thereon

02. FACTS OF THE CASE

The applicant is a proprietary concern registered under the Maharashtra Value Added Tax Act, 2002 having manufacturing unit at E-33, MIDC Area, Ghugus Road, Chandrapur-442406. The applicant was granted Certificate of Registration as manufacturer of cement bricks pavers, mosaic tiles & allied cement products. At the said unit, the applicant is manufacturing *inter-alia* 'Interlocking Paver Blocks (also known as Cement Brick Pavers). The details of both the questions put up for determination are as follows :-

[1] Grey Falcon Pavers (Interlocking Paver Blocks)

The buyer of the applicant (M/s. Laxmi Civil Engineering Services Pvt. Ltd.) undertakes civil contracts and is registered under the Company's Act as well as the Maharashtra Value Added Tax Act, 2002. The applicant has supplied Interlocking Paver Blocks (60 mm thick) in grey falcon colour to the said buyer.

The applicant informs that the basic raw material for manufacturing of 'Paver Blocks' are cement, sand, and stone aggregates, fly ash, bonding super plastisizer and water. The above raw material is mixed thoroughly in a Planetary Mixing system. The material is then directly transferred on to the main hopper of the Paver Blocks Machine. The material is then poured into the mould cavity directly from the hopper. Then the

material is leveled with simultaneous vibration. Then the punch is pulled on to the mould area and the Auto mode button is switched on which does the complete operation of vibration time, pressing time, demoulding time and various other functions. The mould which is placed on the plate is removed from the Paver Block Machine and placed on a stand. The Paver Blocks are then shifted to the curing yard for water spray curing the next day. After 7– 8 days of curing, these are ready for dispatch. Normally, the Paver Blocks are manufactured in 2 sizes – 225 X 112.5 X 80 mm thick used in vehicular areas

225 X 112.6 X 60 mm thick used in pedestrian areas

The Paver Blocks are used to provide concrete pavements of roads, foot paths, court yard of building, etc., The Paver Blocks are used to solve the problem of good water permeability and water-holding properties. They also serve the purpose for which the asphalt or concrete pavement is being made.

[2] Supplying & Laying of Paver Blocks

On 1st September,2004, the applicant entered into annual rate contract with M/s. Bharat Petroleum Corporation Limited (BPCL), Mumbai for supplying and laying of C.C. Paver Block at approach roads and courtyards of Petrol Pumps owned by BPCL. The invoice raised by the applicant on BPCL is of the following description - "*Supplying and laying of paving blocks on sand bed with joints filing sand and edge restrained*". The Paver Blocks are manufactured as per **para no. 02[1]** above as per specifications of BPCL and then transferred to allotted site where laying work is undertaken. The specifications for laying are also stipulated in the annual rate contract as well as in purchase order. While laying paver blocks, curb stone, sand, murum (hard clay), metal, and small quantity of cement is being used. The curb stones used are cement blocks. Metal and cement is not used as it is. At site, metal, sand and cement are used for preparing edge restraint blocks and are thereafter used for edge restraining. Murum and sand is used for bedding in the same form. The Paver Blocks which are used for BPCL's work are of 225 x 112.5 x 80 mm thick size. This is one of the standard sizes of Paver Blocks. It is available with the applicant and not specifically manufactured for BPCL work. The Paver Blocks of 80 mm are normally used for vehicular areas. Therefore, under the present contract also, Paver Blocks of 80 mm were layed in the vehicular areas and courtyards of the petrol pump.

The applicant does not wish to opt for composition scheme as per section 42 of the MVAT Act. Hence, turnover of sales is required to be determined for levy of tax as per

rule 58 of the Maharashtra Value Added Tax 2005. The applicant desires to pay tax after deducting from the contract value, amount as per Table specified in rule 58 of the MVAT Rules, 2005. Under the erstwhile Works Contract Act, the applicant was paying Works Contract tax @ 4% on entire contract consideration. The applicant is of the opinion that the contract executed by him under the impugned bill is a civil contract and therefore would be covered under Sr. No. 5 of the Table given in the prescribed to rule (58) of the MVAT Rules, 2005 and thus entitled for deduction of 30%.

03. CONTENTION AND HEARING

The applicant submits that, the impugned product is basically a kind of brick. The Paver Blocks are used to provide a concrete pavement of roads, foot paths, court yard of building etc. The Paver Blocks are used to solve the problem of good water-permeability and water-holding properties. One consequence of increasing urbanization is that rain water which previously could readily permeate into the ground as it fell, is now not permeating because of the spread of asphalt pavements, concrete pavements, buildings and so on. As a result of this, underground water levels in the surrounding areas also decreases leading to the risk of ground subsidence and adversely affecting growth of trees and ecology of ground organisms. The decrease of water permeable ground surface area also results in decrease in the water-holding capabilities of the ground, in consequence there is an increased risk of flooding when heavy rain falls. The Paver Blocks seek to provide a cement concrete pavement which has water-permeability and water-holding properties and also serve the purpose for which the asphalt or concrete pavement is being made.

The case was taken up for hearing on 21/2/2007. Shri Ashok Chandak, CA attended. The arguments as below in favour of both the questions put up for determination were reiterated during hearing :-

[1] Grey Falcon Pavers (Interlocking Paver Blocks)

The applicant contends that, there was a specific entry at Sr. No. 60 in Part II of Schedule 'C' of the Bombay Sales Tax Act,1959 which covered the cement blocks made from cement and flyash. The entry at Sr. No. 61 in Part II of Schedule 'C' was for 'bricks and tiles'. After introduction of the Maharashtra Value Added Tax Act, 2002, there is no specific entry for Paver Blocks. The applicants contends that, Paver Blocks are nothing

but blocks made from cement and flyash and are in the nature of bricks, thereby covered by the entry 3 of Schedule 'C' of the MVAT Act, 2002 and liable to tax @ 4%.

The applicant contends that, looking to the manufacturing process and size of pavement blocks, it can be concluded that pavement blocks are nothing but blocks made from cement and flyash and are therefore cement and flyash blocks (bricks). Normally clay and flyash bricks are also available in 2 sizes 227 X 102 X 775 mm and 220 X 110 X 380 mm. The size of Paver Blocks matches the size of bricks. Both bricks and paver blocks are made of flyash and cement. The only difference between a brick and a paver block is that, the brick is always rectangular in shape while paver blocks are not, but are irregular because of interlocking arrangement provided. Similarly, bricks are normally used for construction of walls and in India very rarely used for pavement. However, in villages the bricks of thickness of 380 mm are used for small pavement such as stables. The paver blocks are normally not used for construction of walls, etc., but are used for pavement of roads, footpaths, building roads, etc,.

The applicant contends that the Schedule Entry C-3 covers all kinds of bricks without any shape and size and without specifying the use of the same. The applicant further submits that, he has been informed by the Sales Tax Department itself that blocks made from cement and flyash would be covered by the said entry.

[2] Supplying & Laying of Paver Blocks

The applicant contends that, from the material consumption and wages sheet for the job, it is clear that transfer of property takes place in the following goods:-

Sr. No.	Name of the Product	Schedule Entry	Tax Rate
1.	Interlocking Paver Blocks	C-3	4%
2.	Curb Stones	C-3	4%
3.	Sand (used for bedding and joint filling)	C-107	4%
4.	Murum (hard clay) (used for bedding)	C-21	4%
5.	Edge restraint block made out of cement and metal at site	C-3	4%

The Paver Blocks and the stone curb are brought from the factory and are used in the form of Paver Blocks/curb stones only. Therefore, while executing the Works Contract the property stand transferred in the paver blocks and curb stone only and not in the form of raw material which is used for the manufacture of paver blocks and curb stones. The sand is being used for bedding and joint filling. Murum is used for bedding. Therefore, the property in the sand/murum is passed in the same form in which it was

brought. The next part of the process is to cast edge restraints. This is being done with the help of sand, metal and cement at site. The edge restraints blocks are pre-cast at the sight as per the space and therefore the property is not passing in the form of cement or metal or sand but passes in the form of pre-cast edge restraint block as cement block which are covered by entry 3 of Schedule 'C'. The applicant further contends that, the cement is not even used for filling of the gaps between two Pavers Blocks as from those gaps only water is permeable. Therefore, in no case there is a transfer of property in the form of cement or metal which are the products taxable @ 12.5%. Therefore, in the opinion of the applicant, the applicable rate of tax on the entire turnover of sales is 4% as all goods in which transfer of property takes place are covered in Schedule 'C'.

The next argument of the applicant pertains to the contract being a civil work. The contract of supply and laying C.C. Paver blocks is basically meant for pavement of approach roads of the petrol pump and some other area (where pedestrians may walk or vehicles may be parked). Therefore, the entire pavement is nothing but a civil work like construction of road and therefore covered by entry 5 of table given below the proviso to Rule 58(1) of the MVAT Rules,2005 and thus, the applicant is entitled for a deduction of 30% from the full contract consideration. Hence, the applicant contends that, the works contract executed by the applicant under the impugned bill may be held as a civil work, and not as covered by the residuary entry.

The applicant thus prays that, it may held that,

(a) the applicant is entitled to deduct from total contract consideration, 30% amount as per Sr. No. 5 of the table given in the proviso to Rule 58(1) of MVAT Rules; and

(b) the said turnover (total contract consideration) is liable to tax @ 4% under the MVAT Act, since all the goods in which the property is transferred are taxable @ 4% being covered by the Schedule 'C' of the MVAT Act,2002.

04. OBSERVATIONS

I have gone through all the facts of the case. The product of the applicant is Interlocking Paver Blocks. The questions for determination before me are,

A) rate of tax on interlocking paver blocks,
B) rate of deduction for the purposes of rule 58(1) of the MVAT Rules,2005.
C) rate of tax applicable to the contract of supplying and laying of CC Paver Blocks.

05. A) Rate of tax on interlocking paver blocks

The product (Interlocking Paver Blocks) seeks to provide a cement concrete pavement which has good water-permeability and water-holding properties. There is a determination order No. DDQ-1163/290/B-IV/130, Bombay, dated 26th July,1963 in the case of M/s. Ram Subhas Hari & Company wherein the product 'cement concrete blocks (hollow)' manufactured from cement and sand was held as covered by the residuary entry at Sr. No. 22 of schedule E of the Bombay Sales Tax Act,1959. This was due to the article not being covered by any specific entry in the Schedules A, B, C, and D and entries 1 to 21 of Schedule "E" appended to the then Bombay Sales Tax Act,1959. Under the Maharashtra Value Added Tax Act, 2002, we have Schedule Entry C-3 which reads thus,-

"All kinds of bricks including fly ash bricks and refractory bricks and monolithics, asphaltic roofing tiles, earthen roofing tiles"

Now "*All kinds of bricks including fly ash bricks .....*" means '*fly ash bricks*' have been specifically included in the said entry on '*bricks*'. The applicant contends that, '*fly ash bricks*' and '*blocks made from cement and fly ash*' serve the same purpose and are made of the same material with only difference as to the size. It is contended by the applicant that, the contents of *Fly Ash bricks* which are covered by Schedule Entry C-3 are similar to the contents of *Interlocking Paver Blocks*. Also the end use of both the products is the same i.e., both are used in construction. Hence, let me look at the ingredients of the product.

Now, the ingredients of the product as informed by the applicant are cement, sand, and stone aggregates, fly ash, bonding super plastisizer and water. However, the product literature submitted by the applicant speaks of the following ingredients :-

INGREDIENTS

More particularly, the present invention provides a concrete pavement which is formed from a hardened cement concrete mixture of :

300 – 400 kg of Portland cement
0.008 – 0.04 part by weight of binder per part by weight of the cement,
0.3 – 0.45 part by weight of water per part by weight of the cement, and
an aggregate forming the balance of the mixture and composed of sand and No. 7 crushed stone in a weight ratio within the range of from 5 : 95 to 20 : 80,

substantially uniformly distributed per m^3, and the wear surface of the hardened cement concrete mixture having been treated to remove cement mortar adhering to aggregate at said surface.

Now, the applicant has informed that, the impugned product contains fly ash as one of the ingredients. Hence, let me ascertain whether "*Fly Ash* B*ricks*" would include "*Fly Ash Blocks*". This is necessary as the Schedule Entry C-3 is for '*bricks*' and not "*Blocks*". Also, the words used for the purposes of the said entry are "*Fly Ash* B*ricks*" and not "*Fly Ash Blocks*". I have already seen the composition of '*Interlocking Paver Blocks*'. We could take a look at the meanings of the following terms and some extracts from the internet to have an understanding of these terms :

[a] Fly Ash (Condensed Chemical Dictionary)

The very fine ash produced by combustion of powered coal with forced draft and often carried off with the flue gases. Special equipment is required for effective recovery, e.g., electrostatic precipitators. Fly ash is a mixture of alumina, silica, unburned carbon, and various metallic oxides. It is reported to have mutagenic properties after passing through stack precipitators. The alumina is recoverable by **calsintering**, which makes it a possible alternative source of aluminum.

USE

Cement additive for oil-well casings, absorbent for oil spills (silicone-coated), to replace lime in scrubbing sulfur dioxide from flue gas, as a filler in plastics, source of germanium (England), proposed as catalyst for coal liquefaction, removal of heavy metals from industrial waste waters, separation of oil-sand tailings.

[b] Bricks (Webster's Dictionary**)**

"a block of fired clay and sand used in building".

[c] Extracts from the Internet

(i) Ash Bricks

Ash bricks are made of:

- Fly ash, lime, gypsum and coarse sand
- Fly ash, cement and coarse sand

Features:

- Size 230x110x70mm
- Ash content up to 60% by weight of brick
- Conforming to IS 12894
- 10% lighter in weight than conventional clay bricks
- Compressive strength more than 100 kg /sq.cm.
- Uniform in shape with frog
- More durable as strength increases with passage of time
- Water absorption within permissible limits
- Less mortar consumption in masonry
- Savings in plastering cost
- Cost is comparable with conventional bricks
- CPWD has already approved fly ash bricks in DSR

At present, installed production capacity is 30,000 bricks per day

(ii) Flyash-Bricks

The process of manufacturing fly ash bricks is based on the reaction of lime with silica of flyash to form calcium silcate hydrates(C-S-H) which binds the ingredients to form a brick. The qualities of bricks obtained are highly dependant on the quality of flyash. The manufacturing of Lime-Flyash bricks are generally designed such that they stand at par with burnt clay bricks used conventionally. Fly ash bricks have good compressive strength, low water absorption, high density and low shrinkage value as compared to burnt clay bricks.

Raw materials: Raw materials required for manufacturing of bricks are Flyash, lime gypsum and sand (optional).

Flyash:(usage 60 -75 %) Apart from conforming to IS Requirement the minimum requirement for manufacturing of fly ash bricks are :

Loss of Ignition --- should be not more than **12%**
Availability of **MgO** ------should be not more than **5%**
Availability of **SiO_2** **-**------should be not more than **35%**
Availability of **Al_2O_3** ------should be not more than **15%**

LIME:(usage 8 -15 %) Lime is very important ingredient used for manufacturing of bricks, hence it should satisfy following minimum requirement:

- Lime, while slaking process should not attain less than 60^0 Celsius temperature and slaking time should not be more than 15 minutes.
- Availability of CaO should be minimum 60%
- MgO content should be maximum of 5%.

GYPSUM:(usage 2 - 5%)It is added to the mix in order to accelerate hardening process and acquiring the early strength. It should have minimum 35% of purity.
SAND:(usage 0 - 8 %)Addition of sand is optional, but to enhance the gradation of the mix ,addition of coarse sand is quite preferable. Addition of sand also enhances the resitivity of mix to formation of laminar cracks caused due to entrapped air.
Manufacturing: The manufacturing process s of bricks broadly consists of three operations viz. mixing the ingredients, pressing the mix in machine and curing the bricks for stipulated period.

(iii) Fly Ash Blocks

Fly ash blocks are made with the same technology and composition as ash bricks with only a difference in size.

Features:

- Size of blocks is 290x185x125mm
- Faster construction
- Less mortar consumption
- Most suitable for boundary walls
- Plastering not required
- Decorative, like stone masonry

(iv) Blocks

Day by day the use of concrete blocks is gaining importance due to its own importance and advantages, except for its cost. The cost of concrete blocks can be cut drastically with the use of fly ash for its manufacturing.
Manufacturing of fly ash blocks requires following ingredients :-
FLYASH: The fly ash should conform to IS requirement dry fly ash with lime reactivity more than 60 kg/$cm^{2.}$
CEMENT: 43 grade Ordinary Portland cement conforming to IS
SAND: sand required for the mix should be free from dirt, impurities and fall in zone II.
COARSE AGGREGATE: Crushed aggregate of maximum nominal size 10 mm.

MANUFACTURING: The fly ash concrete blocks can be manufactured on machine (preferably egg laying type) or stationary type, if high production rate is expected. Blocks are partially compacted and it requires to attend early strength so that transportation is easy. The fly ash is mix dry with the cement, before adding the raw materials to the mixer. The properly mixed concrete is placed in the block making machine. The blocks extracted from the machine is air dried and then sent for curing. Fly ash concrete requires more period for curing than ordinary concrete.

(v) Paver Block

Interlocking Paving Block is an extremely high stressed concrete block with unique interlocking shape. It is multi-weaved paving block and has unique design which allows each individual block to tightly interlock with the surrounding blocks, thus creating an incredibly strong uniform surface. Their strength combined with design and flexibility makes this block a perfect modern option. In an industrial area it can resist the high stresses imposed by point loads associated with trailer jacks or heavy duty racking and is undamaged by oil spillage.

(vi) Interlocking Blocks

Fly ash interlocking blocks are made with or without stone aggregate. These are manufactured in different attractive shapes and colours, depending upon strength & usage requirements.

Features:

- Fly ash contents up to 35%
- Durable
- Economical
- Self-interlocking, no mortar required for laying
- Faster and easier from construction point of view

(vii) Interlocking Paver Blocks

Description :

Paving Blocks used for external floors are in great demand in modern building owing to their beauty, durability and economy. Paving blocks floors can be made in any design or shape desired. Its most popular because of the unlimited variety of pleasing patterns and colored schemes. Paving blocks are increasingly used not only in walks ways & jogging tracks but also in entire building compounds, storage yards, petrol stations, swimming pool decks, parking lots and other landscaping areas. Highly wear-resistant in nature, the life of the blocks is much more than the ordinary P.C.C done in the external areas.

Raw Materials :

The blocks are made in both single and double layers to endure both beauty and strength of the product.

- Top layer consists of cement, marble powder, coarse powder, and amery powder for equivalent abrasion resistant materials & required pigments for color.
- The bottom layer consists of cement, sand & coarse aggregate of required mix. [The mix is decided as per the required specification]

Manufacturing Process :

The raw materials are mixed seperately in required proportion in mixers and ball mills and filled into hoppers of the paving block machine. The block is cast automatically with vibration and compaction of 2000 psi/sq.inch as per the design of the moulds. The blocks are then put into curing chambers and are ready for dispatch after 24 hrs of staem curing.

Layering Process :

a) Rubble Soiling : is required to be done on areas where the soil is loose and has a tendency to sink during monsoons. This is specially required where vehicles are going to ply, thus to avoid any sinking of the area. the border should be fixed to prevent the blocks from shifting and getting loosened

b) Bedding Materials : the bedding materials consists of pure sand duly compacted with a surface vibrator(Compactor). This layer should be not less than 2" to provide sufficient cushion to the blocks.

c) Layering of Blocks : The blocks can be directly placed on this bedding layer prepared. The blocks should be placed very close to each other to avoid any shifting. This special care has to be taken because the joints are not filled with cement.

d) Compaction : The surface compactor is again plied on the blocks laid with a little sand rolled over it. This process helps the sand to fill any voids or air blocks in the joints if the blocks are laid. This process also helps to level any uneven laying of blocks.

e) Cleaning : The floor laid now needs proper cleaning of unused sand on it and is ready for use.

(viii) PROPERTIES OF CONCRETE BLOCK PAVING

Introduction

The use of small stone elements to create a hard surface for roads or pavements is an ancient tradition that can be traced back to the royal processional roads of ancient Babylon, continuing in Greek and Roman times. Concrete block paving continues this tradition and was first introduced in Holland after the Second World War followed by other countries (notably Germany) and its introduction to the UK in the 1970s. Concrete block paving is a unique material, exhibiting important differences to other

small element paving such as stone and clay, as well as to formless materials such as asphalt and insitu concrete. It provides a hard surface which is good to look at, comfortable to walk on, extremely durable and easy to maintain. It adds a richness, complexity and human scale to any setting. Blocks are fully engineered products manufactured in the factory to give consistency and accuracy. The resulting interlocking characteristics of concrete block paving give it a distinct advantage over other forms of surface. Laid on a granular laying course and with an edge restraint individual blocks interlock with each other to act together, distributing large point loads evenly. Concrete block paving can be used immediately after the laying procedures have been completed and requires only minimal maintenance. Today, mechanical installation techniques allow large areas to be laid with a minimum of manpower saving both time and money.

Applications

Concrete block paving offers outstanding strength and durability, and is resistant to most chemicals making it suitable for a range of applications from ultra-heavy duty areas such as industrial units, container stacking yards and airport pavements to lightly trafficked residential areas and hard landscaping projects. Block paving can also be used in conjunction with precast concrete flags, with coordinating sizes, to give variety combined with consistent surface characteristics. Worn out road surfaces and other areas such as aircraft aprons, industrial hard-standings and car parks can be strengthened and reconditioned by an overlay of concrete block paving on a sand laying course. The new wearing surface uses the old pavement as the base course, providing it is structurally sound, and the design procedure is included in BS7533 2001. This cost saving rehabilitation technique can be completed in sections with minimal disruption and has led to it being adopted extensively by airport operators such as BAA.

From the above, it can be seen that fly ash blocks are made with the same technology and composition as fly ash bricks with only a difference in size. It is not disputed that both *bricks* and *blocks* are used in construction. The impugned product is interlocking paver blocks. Ash bricks are made of

- Fly ash, lime, gypsum and coarse sand
- Fly ash, cement and coarse sand

Thus, cement may or may not be an ingredient of fly ash bricks. But cement is invariably an ingredient of fly ash blocks and paver blocks. The primary structural advantage of concrete blocks in comparison to smaller clay-based bricks is that a Concrete Masonry Unit wall can be reinforced by filling the block voids with concrete with or without steel rebar. Paving blocks are precast solid products made out of cement concrete. Interlocking concrete paving stones is a flexible system in which each paver is set in sand. Bricks are typically set in mortar and are not flexible so they can crack when the earth moves. Interlocking concrete paving blocks are resistant to heavy loads, easy to repair, require little maintenance, and are of high quality. Interlocking concrete pavers are composed of cement and fine and course aggregates. Color is often added. Pavers are

made in factory controlled conditions that apply pressure and vibration. The result is a high strength concrete that can be molded into many shapes.

Thus, *bricks* are different from *blocks,* only with respect to size and quality. And hence, '*fly ash bricks*' would cover '*blocks made from cement and fly ash*'.

At the cost of repetition, let me reproduce herein, the schedule entry under MVATA,2002 as follows :-

"All kinds of bricks including fly ash bricks and refractory bricks and monolithics, asphaltic roofing tiles, earthen roofing tiles"

Under the BST Act,1959, we had the following schedule entries :-

Schedule Entry	**Description**
C-II-60(1)	Articles of cement, stone, plaster, asbestos, mica or of similar material excluding those covered elsewhere.
C-II-61	Bricks and earthen roofing tiles.

Now vide GNFD No. STA-2004/CR-55/Taxation-2, dated the 3rd July, 2004, the following notification under Section 41 of the B.S.T.Act, 1959 was issued :-

Class of sales or purchases	**Extent of Exemption**	**Period**
Sales or purchases made by a registered dealer of cement blocks made from cement and fly ash covered by sub-entry (1) of entry 60 in Part-II of Schedule "C".	In excess of eight per cent.	1.6.04 to date

The above notification sought to reduce the rate of tax on '*blocks made from cement and fly ash*' covered by the Schedule Entry C-II-60(i) and not by the Schedule Entry C-II-61 which pertains to '*bricks*'. This means that the '*cement blocks made from cement and fly ash*' were not treated as covered by the entry on '*bricks*' but were included in the entry on '*Articles of cement, etc…*'.

Now, under the MVATA, 2002, we have an entry on '*bricks*' only and no entry on '*Articles of cement, etc…*'. But one important amendment is made to the entry on '*bricks*' and the same seeks to include '*fly ash bricks*' in the entry on *'bricks'*. Also under the B.S.T.Act, 1959, the wording of the entry was "*Bricks* and .....' whereas under MVATA, 2002, the entry is worded as "*All kinds of bricks* ....." i.e., now all types of *bricks* including *fly ash bricks* are sought to be covered.

I have already observed above as to *'blocks made from cement and fly ash'* being covered by *'fly ash bricks'* Thus, '*blocks made from cement and fly ash*' would be covered by the scope of the entry C-3 of the MVATA, 2002. Hence, in the present case, the product

'*Interlocking Paver Blocks*' which are nothing but fly ash concrete blocks, would be covered by the schedule entry C-3, thereby attracting tax @ 4%.

06. B) Rate of deduction for the purposes of rule 58(1) of the MVAT Rules,2005.

The applicant has undertaken the contract of supplying and laying of CC paver blocks for pavement of approach roads of petrol pumps. Under the erstwhile Works Contract Act as well as under the MVAT Act,2002, transfer of property in goods is a taxable event. Unless there is transfer of property, no tax is payable under the provisions of the MVAT Act. The work of supply and laying of CC Paver Blocks undertaken by the applicant is a Works Contract as it involves transfer of property in goods.

Now, the applicant contends that, the nature of his contract is a civil contract and hence he is entitled to claim the deduction @ 30% which is meant for 'civil works like construction of buildings, bridges, roads, etc., specified in rule 58(1) of the MVAT Rules,2005. Rule 58 of the MVAT Rules,2005 pertains to determination of sale price and of purchase price in respect of sale by transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The said rule allows certain ascertainable deductions from the total contract value and tax is to be paid on the balance value at the appropriate rate of tax applicable to the commodity. Let me reproduce herein the table for the purposes of the rule-58:-

Sr. No.	**Type of Works Contract**	***Amount to be deducted from the contract price (expressed as a percentage of the contract price).**
(1)	**(2)**	**(3)**
1.	Installation of plant and machinery	Fifteen per cent
2.	Installation of air conditioners and air coolers	Ten percent
3.	Installation of elevators (lifts) and escalators	Fifteen per cent
4.	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	Twenty five per cent
5.	Civil works like construction of buildings, bridges, roads, etc.	Thirty per cent
6.	Construction of railway coaches on under carriages supplied by Railways	Thirty per cent
7.	Ship and boat building including construction of barges, ferries, tugs, trawlers and dragger	Twenty per cent
8.	Fixing of sanitary fittings for plumbing, drainage and the like	Fifteen per cent
9.	Painting and polishing	Twenty per cent
10.	Construction of bodies of motor vehicles and construction of trucks	Twenty per cent

11.	Laying of pipes	Twenty per cent
12.	Tyre re-treading	Forty per cent
13.	Dyeing and printing of textiles	Forty per cent
14.	Annual Maintenance contracts	Forty per cent
15.	Any other works contract	Twenty five per cent

It can be seen from the above table that, the description at Sr.no. (5) pertains to civil works like construction of buildings, bridges, roads, etc. Now the contract of supplying and laying of CC paver blocks for pavement of approach roads of petrol pumps undertaken by the applicant would classify as a civil work of construction. Hence, the applicant is entitled to deduct from his total contract consideration, amount at the rate specified against Sr.no. (5) of the above table.

07. C) Rate of tax applicable to the contract of supplying and laying of CC Paver Blocks.

The work of supplying and laying of CC Paver Blocks undertaken by the applicant is a Works Contract. The applicant does not wish to opt for payment of taxes as per the composition scheme. Hence, he would have to pay taxes on the turnover of sales in which there is transfer of property in goods involved in the execution of works contract. The value of the goods at the time of the transfer of the property in the goods (whether as goods or in some other form) involved in the execution of Works Contract may be determined by effecting from the value of the entire contract, ascertainable deductions as specified in Rule 58(1)(a)to(h) or by taking deductions as per the table given in the proviso to Rule 58(1) of the Maharashtra Value Added Tax Rules,2005. After taking the aforementioned deduction, the applicant is required to levy tax on the balance amount comprising of material consumed and profit thereon at the rates for the materials in which the property has been transferred, specified in the schedules appended to the Maharashtra Value Added Tax Act,2002.

Hence, the applicant would have to pay tax at the rates specified in the schedules appended to the Maharashtra Value Added Tax Act,2002.

08. In view of the deliberations held hereinabove, I pass an order as follows:-

ORDER

(Under section 56 (1) (d) & (e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-06/Adm-5/67/68/B-7 Mumbai,dt. 30.04.2007

The questions put up for determination are answered as follows:-

Sr.No.	Question	Determination
1.	Rate of tax on interlocking paver blocks.	Taxable @ 4 % being covered by the schedule entry C-3.
2.	Rate of deduction for the purposes of rule 58(1) of the Maharashtra Value Added Tax Rules,2005.	Deduction @ 30% as per table given in the proviso to Rule 58(1) of the Maharashtra Value Added Tax Rules,2005.
3.	Rate of tax applicable to the contract of supplying and laying of CC Paver Blocks.	Tax is to be levied on for the materials in which the property has been transferred at the rates specified in the schedules appended to the Maharashtra Value Added Tax Act,2002.

(B .C. KHATUA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.