Read:- 1. Application dated 20th September, 2005 of M/s. Neham International., holder of Registration Certificate No. 400086/S/6724 dated 10.09.2004.

2. This office letter dated 16th January, 2006 calling the applicant for hearing on 18th January, 2006.

Heard:- Shri. Ratan Samal, Advocate attended on behalf of the applicant.

PROCEEDINGS

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

No.DDQ-11-2005/Adm-5/77/B-4 Mumbai, dt.10/04/2006

An application is received from M/s. Neham International of 1/1, Swami Lila Shah, Garden Lane, L.B.S. Marg, Ghatkopar (West), Mumbai-400 086, posing for determination the question as regards the Schedule Entry and rate of tax applicable to the following products :

1. Stent

2. Tracheostomy Tube, Endobronchial Tube, Performed Tracheal Tube and other Anesthesia and critical care products.

The applicant is of the opinion that with the introduction of Maharashtra Value Added Tax Act, 2002 which repealed the earlier Bombay Sales Tax Act, 1959, there are a lot of changes in respect of the definitions and schedule rates under the new Act. Hence to have a confirmed view, he has presented this application for determination.

02. DETAILS SUBMITTED ALONG WITH THE APPLICATION

1. Copy of Sale Invoice No. 117 dt. 9.5.2005.
2. A detailed written submission.
3. Proof of payment of fees.
4. Letter of authority authorising Shri Ratan Samal, Advocate to attend on behalf of the applicant.
5. An order by the Food & Drugs Administration in respect of the product "Drug Eluting Stent".
6. Copies of the various judgments on which the applicant relies in support of his claim for the schedule entry applicable to his products :

03. BACKGROUND OF THE CASE

The applicant is a registered dealer under the Maharashtra Value Added Tax Act, 2002. The applicant carries on the business of importing and reselling of various types of drugs including Stent, Anesthesia and critical care products. The applicant holds valid licenses under the Drugs & Cosmetics Act, 1940 for the above products. Considering the introduction of Value Added Tax with effect from 1.4.2005, the applicant is in a dilemma as regards the rate of tax applicable to the products mentioned hereinabove. The products are sold to different hospitals and

medical stores. The products could be discussed as follows :

1. **Stent :** The applicant in his submission states that the use of the stent reduces incidents of restonsis (recurrence of blockages in artery due to clotting of blood). The stent is implanted inside the artery during the angioplasty procedure. In the procedure, the catheter is used to infuse the implanted stent inside the artery with a drug called Pacitaxel. Some stents are also coated with Sirolimus and Pacitaxel drugs.

2. **Tracheostomy Tube, Endobronchial Tube, Performed Tracheal Tube and other Anesthesia and critical care products :** These products are used to connect the oxygen cylinders on the one side and the other end is connected to the patients. They are either put into the nose or the trachea. The applicant submits that these products help the patients in breathing as well as to control cough inflation. They are critical care products.

The applicant submits that various brands of the above products are available in India. The price range of Stent varies from Rs. 35,000/- to Rs. 1,25,000/-. The physicians who handle these equipments have received appropriate training to perform such implantations.

The applicant is of the view that the products are drugs as understood by Schedule Entry C-29/C-29(a) of the Maharashtra Value Added Tax Act, 2002.

04. <u>CONTENTION AND HEARING</u>

The applicant submits that in view of the legal position and judicial pronouncements so far, the products may be treated as drugs falling under Schedule Entry C-29/C-29(a) of Maharashtra Value Added Tax Act, 2002, thereby attracting tax @ 4%. The applicant also submits that the products can alternatively be classified as devices under Schedule Entry C-29A (a) or C-107(8) of the Maharashtra Value Added Tax Act, 2002.

Shri Ratan Samal, Advocate attended on behalf of the applicant on 18th January, 2006. He contended that cardiac stent should be classified as a drug and medicine as per Schedule Entry C-29/C-29(a) and not as device as per the Entry C-29A (a). In respect of the product "Anesthetic Mask", he stated that the same is covered by the notification to the Schedule Entry 107(8) of the Maharashtra Value Added Tax Act, 2002.

In the alternative, it is prayed that if the products are not determined to be either drugs or medical devices and subjected to tax @ 12.5% by virtue of falling under the residuary Entry E-1, the applicant's past liability may be protected till the date of the determination order.

05. <u>OBSERVATIONS</u>

The applicant has contended that the products get classified as drugs and therefore fall under Schedule Entry C-29/C-29(a) of the Maharashtra Value Added Tax Act, 2002 which is for drugs. The applicant also prays that if the products are classified as devices falling under Schedule Entry C-29A (a) or C-107(8) then, this determination may be given a prospective effect.

I propose to go through the case as follows :-

[A] Ascertaining the meaning of the three schedule entries.

[B] Ascertaining the nature and use of the products.

[C] Ascertaining the connecting link, if any between the Schedule entries and the impugned products.

[A] <u>SCHEDULE ENTRIES</u>

Let me reproduce the relevant schedule entries under the Maharashtra Value Added Tax Act, 2002 before proceeding with the discussion on the same.

Schedule entry No.	Description	Rate of Tax	Date of Effect
C-29	Drugs (including Ayurvedic, Sidha, Unani, spirituous Medical Drugs and Homoeopathic Drugs), being formulations or preparations conforming to the following descriptions:- Any medicinal formulation or preparation ready for use internally or on the body of human beings, animals and birds for diagnosis, treatment, mitigation or prevention of any diseases or disorders, which is manufactured or imported into India, stocked, distributed or sold under licence granted under the Drug and Cosmetic Act,1940, and includes devices notified by the Central Government under sub-section (iv) of clause (b) of section 2 of the said Act, but does not include mosquito repellants in any form.	4%	1-4-2005 to 30-4-2005.
C-29	Drugs (including Ayurvedic, Sidha, Unani, spirituous Medical Drugs and Homoeopathic Drugs), being formulations or preparations conforming to the following descriptions:- Any medicinal formulation or preparation ready for use internally or on the body of human beings, animals, and birds for diagnosis, treatment, mitigation or prevention of any diseases or disorders, which is manufactured or imported into India, stocked, distributed or sold under licence granted under the Drug and Cosmetic Act,1940 but does not include mosquito repellants in any form.	-d0-	1-5-2005 to 31-01-2006
C-29	29(a) Drugs (including Ayurvedic, Sidha, Unani, spirituous Medical Drugs and Homoeopathic Drugs), being formulations or preparations conforming to the following description:- Any medicinal formulation or preparation ready for use internally or on the body of human beings, animals, and birds for diagnosis, treatment, mitigation or prevention of any diseases or disorders, which is manufactured or imported into India, stocked, distributed or sold under licence granted under the Drug and Cosmetic Act,1940 but does not include mosquito repellants in any form. (b) Medical Oxygen and Nitrous Oxide manufactured under licence granted under the Drug and Cosmetic Act, 1940.	-d0-	01.02.06 till date
C-29A	(a) Devices notified from time to time by the Central Government under sub-clause (iv) of clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940. (b) Bandages and dressings manufactured or imported into India, stocked, distributed or sold under licence granted under the Drugs and Cosmetics Act,1940.	-d0-	1-5-2005 to till date.

C-107	(8) Medical devices and implants as may be notified from time to time by the State Government in the Official Gazette;	-do-	1-5-2005 to 31-01-2006
C-107	(8) Medical devices and implants as may be notified from time to time by the State Government in the Official Gazette;	-do-	01-02-06 till date.

Now entries C-29[1-4-2005 to 30-4-2005], C-29A (a) and C-107(8) speak of notification to be issued for the purpose of the said entries. It is thought unnecessary to reproduce the said notifications herein. A mere mention of the fact, as regards, whether the impugned products are included in the said notification or not would be sufficient.

Let me discuss the Schedule entries in the order as reproduced above.

[1] Schedule Entry C-29/C-29(a) : The entry pertains to Drugs fulfilling the conditions as laid out in the said entry itself.

It can be seen that for the period 1-4-2005 to 30-4-2005, the entry on drugs specifically included devices notified by the Central Government under sub-section (iv) of clause (b) of section 2 of the Drugs and Cosmetics Act, 1940. The same was excluded w.e.f 1/5/2005 and a new entry C-29A (a) was formed with the same wording. Again w.e.f 01.02.06 the entry on drugs was amended. With this amendment the sub-entry (a) of this entry [C-29] on drugs pertains to only definition of drugs and the sub-entry (b) pertains to Medical Oxygen and Nitrous Oxide manufactured under licence granted under the Drug and Cosmetic Act, 1940. It can be thus seen that even Medical Oxygen and Nitrous Oxide had to be specifically mentioned in the form of a sub-entry to the main entry which pertains to only definition of drugs.

To qualify as a drug, a product should satisfy all the five conditions simultaneously:-

1. It should be a medicinal formulation or preparation ready for use internally or externally on human beings, animals and birds.

2. It is used for diagnosis, treatment, mitigation or prevention of any disease or disorder.

3. It should be manufactured or imported into India.

4. It should be stocked, distributed or sold under license granted under the Drugs and Cosmetics Act, 1940.

5. It does not include mosquito repellents in any form.

Of the five conditions, the condition No. 2 pertaining to diagnosis, treatment, mitigation or prevention of any disease or disorder is the most important and decisive test.

During the period 1-4-2005 to 30-4-2005, the entry on drugs had sought to include devices also by the words *"and includes devices notified by the Central Government under sub-section (iv) of clause (b) of section 2 of the said Act".*

The entry was split into two different entries and a new entry 29A(a) was introduced w.e.f. 01/05/2005 to specifically include the devices notified by the Central Government.

The Bombay High Court had an occasion to interprete the word "including" in case of M/s. Afson

"including" in an entry, is to indicate that though the items following the word "including" are of the type of the main item in the entry, there could be some doubt as to whether the main entry covered them or not and, therefore, the legislature specifically mentioned those items in the entry to remove scope for any doubt."

The Allahabad High Court in case of Ashoka Dairy, 53 STC 239, had observed that, the word "including" is to be interpreted as "and". It is thus clear that whenever word "*including*" is used in the Schedule Entry or in notification, it is used in restrictive sense, so as to specifically include only those goods which are mentioned therein. The word "including" in the Schedule Entry leaves no scope to expand the ambit of the Schedule Entry. In interpreting the Schedule Entry, one has to look merely at what is clearly said and there is no scope for any intendment.

The intention of the legislature as reflected in the Schedule entry appears very distinct and unambiguous. A product to qualify as a drug has to pass all the five specifications simultaneously as mentioned in the schedule entry only. A product to be declared a drug has to be interpreted only in terms of the Schedule Entry C-29/C-29(a) of the Maharashtra Value Added Tax Act, 2002.

[2] Schedule Entry C-29A : The Schedule entry has sub-entries which could be seen

separately as follows :-

i] The sub-entry (a) which came into effect from 1/5/2005 pertains to devices notified from time to time by the Central Government under sub-clause (iv) of clause (b) of Section 3 of the Drugs & Cosmetics Act, 1940. Thus this sub-entry (a) depends on the Drugs & Cosmetics Act. It does not lay down any specifications as to the type, nature or category of devices to be included for the purpose of the entry. It just notifies only those devices which are notified by the Central Government for the purpose of the Drugs & Cosmetics Act, 1940.

ii] The sub-entry (b) which came into effect from 1/2/2006 pertains to Bandages & Dressings which are manufactured or imported into India and stocked, distributed or sold under license granted under the Drugs and Cosmetics Act, 1940. The discussion on this sub-entry is not relevant in the present case.

iii] The sub-entry (c) which came into effect from 1/2/2006 pertains to syringes. Again it is not necessary to discuss this entry as it is not relevant in the present context.

[3] Schedule Entry C-107(8) : The Schedule entry speaks of medical devices and implants notified by the State Government from time to time in the Official Gazette.

The difference between Schedule Entry C-29A (a) and C-107(8) is that in the case of the former the devices are notified by the Central Government while in the case of the latter, the devices are notified by the State Government.

[B] <u>NATURE AND USE OF THE PRODUCTS</u>

The products as mentioned in the application are :

1] Stent **2]** Tracheostomy Tube **3]** Endobronchial Tube **4]** Performed Tracheal Tube **5]** Other Anesthesia & Critical Care products

The products as mentioned in the Invoice put up for determination are :

1] Coronary Stent Vision **2]** Inflation Device **3]** Cross it PTCA guidewire 4**]** Connector Kit **5]** Y Connector **6]**

It is informed that the above products fall under two categories -

1. Stent

2. Anesthesia & Critical Care products

I would discuss the products as follows :

The drug eluting stent was developed to address the problem of in-stent blockage. The drug embedded in the stent is released into the lining of the artery, preventing the growth of scar tissue around the stent, the primary cause of re-blockage. Coronary stents are often used with traditional PTCA (balloon angioplasty) to prevent restenosis and improve the functioning of the coronary arteries. Thus it goes without saying that the product is a device.

The other products are of the nature of anesthesia and critical care products. Their very names such as connector, wire, etc. suggest their use as a device.

[C] LINK BETWEEN THE SCHEDULE ENTRIES AND THE PRODUCTS

It needs to be determined whether the product description matches the description of the Schedule entry. This being the most essential part of the observations, I hereby proceed to examine the links, if any.

[1] Stent :

Having discussed the schedule entries and the products let me have a look at the arguments and judgments cited by the applicant in support of his claim of the products being drugs.

[i] The applicant in his written submission has pointed out the definition of drug under the Drugs & Cosmetics Act, 1940. The entry C-29 or as the case may be C-29(a) of the Maharashtra Value Added Tax Act, 2002 is not a referential entry. The entry itself defines the meaning of the word "drug" for the purposes of this schedule entry. The entry does not convey that the meaning of the word "drug" is to be derived from the Drugs Act & Cosmetics Act, 1940. Thus, the reliance of the applicant on the meaning of 'drug' as per the Drugs Act & Cosmetics Act, 1940 is irrelevant, as far as, the interpretation of schedule entry C-29 / C-29(a) is concerned.

The applicant further stresses the point that since the product 'stent' cures diseases like blockage of artery which helps to avoid heart attacks, the product gets squarely covered by the definition of 'drugs'.

[ii] The applicant in his written submission has mentioned the dictionary meaning of medicine. I do not feel the need to discuss the definition of medicine as per the dictionary, the reason being that a product to be qualified as a drug needs to fulfill the conditions and specifications as laid down in the schedule entry C-29/C-29(a) on drugs. Since a specific definition is provided by the Act itself, the resort to any other means of interpretation for the product "Drug" in considering the tax aspect is totally uncalled for.

[iii] The applicant has also submitted a copy of an order by the Commissioner, Food & Drugs Administration, Mumbai stressing the mention of the word "drug" used in relation to the product "drug eluting stent". This argument of the appellant also does not hold good as it is an incorrect and incomplete interpretation of the said order. The order pertains to obtaining the required approvals of the Food & Drugs Administration, Maharashtra and has nothing to do with taxation.

This clause regarding devices notified by the Central Government was included in the entry on drugs for the period 1-4-2005 to 30-4-2005. However, during that period, the product "stent" was not notified by the Central Government. The product "stent" is notified as a "Sterile device" only w.e.f.

1940.

Hence the argument of the applicant as regards the tax rate only .for the product "stent" holds goods for the period from 6.10.2005 onwards and not the earlier period.

[iv] The applicant has placed reliance on the following judgments in support of his claim of the products being "drugs". I would discuss each one of the judgments separately as follows :-

[1] **M/s. Merind Ltd V/s. State of Maharashtra [30 STC 11]**

It was held by the Bombay High Court that Diagnostic Kits are medicinal formulations/preparations taxable under Schedule Entry C-II-37 of the Bombay Sales Tax Act, 1959 which pertains to Drugs. A Diagnostic Kit comprises of different types of reagents and solutions which are assembled and kept in the kit. These reagent and solutions were medicinal formulations or preparations. Hence they were drugs.

But in the present case, the products are notified as devices and not drugs i.e. medicinal formulations or preparations. Hence the reliance on this case is not of any help to the applicant.

[2] **M/s. TTK Pharma Ltd V/s. The State of Maharashtra [11 STC 730]:**

In this case, it was held that the products such as micro-porous paper surgical tape, fibreglass casting tape, dressings, pregnancy test cassette/kit were held as falling under the Schedule entry C-II-37 of the Bombay Sales Tax Act, 1959. It was held that the definition of "drugs" is comprehensive enough to take in not only medicines but also substances intended to be used for or in the treatment of diseases of human beings or animals. The view of the Commissioner as regards pregnancy not being a human disorder was disagreed by the Tribunal.

In the said judgment, the Tribunal has interpreted the words 'treatment' and 'diagnosis' as appearing in the schedule entry C-II-37. The ratio of this judgment is not applicable to the facts of this case as the impugned products are not medicinal formulations and also they do not satisfy the criterion for a product to be termed as a medicine.

[3] **Determination Order by the Commissioner, Maharashtra State, in the case** of **M/s. Boehringer Mannheime India Ltd (dated 4.3.2000):**

It was held that "Radiopaque Bone Cement" is covered by the Schedule Entry C-II-37 of the Bombay Sales Tax Act, 1959. In this case it was not disputed that the product is a medicinal formulation since it had all the characteristics of any ordinary drug and it was not an implant.

In the present case, the product "stent" is notified as a "sterile device" by the Central Government itself in the notification for the purposes of the Drugs & Cosmetics Act, 1940.The other products are also devices and not drugs.

[4] [a] **Commissioner of Sales Tax, Uttar Pradesh, Lucknow V/s. Allied Surgical Emporium (Agencies) (63 STC 221) :**

It was held by the Allahabad High Court that Catguts-sutures used for stitching wounds fall under category of medicine and pharmaceutical preparations and not under surgical goods. It was held that drugs include all medicines and also substances used for treatment of human beings or animals.

[b] **Rashtra Deep Laboratory V/s. Commissioner of Sales Tax, U.P. (53 STC 419):**

It was held that "water for injection" falls under the entry on medicine and pharmaceutical

an article which, by itself, is enough to cure a human ailment.

The Schedule entry on drugs as per the Uttar Pradesh Act & Maharashtra Act is structured differently. The entry under the Uttar Pradesh Act is worded as "medicines and pharmaceutical preparation". To interpret a product as regards, its being a drug, the same has to be interpreted in terms of the entry as per the relevant Act only. Hence, this judgment would not be applicable to the present case. In the present case, the product "stent" is notified as a "sterile device" by the Central Government itself in the notification for the purposes of the Drugs & Cosmetics Act, 1940.The other products are also devices and not drugs. The ratio of both the above cases 4(a) and 4(b) would not apply to the present case as the impugned products are devices and not drugs. The other products are also devices and not drugs.

[5] **Commissioner of Income Tax, Lucknow V/s. Madho PD Jatia (In the Supreme Court of India dt. August 17, 1976) :**

The following was observed:

"It is well settled that there is no equity about tax. If the provisions of a taxing statute are clear and unambiguous, full effect must be given to them irrespective of any consideration of equity. Where, however, the provisions are couched in language which is not free from ambiguity and admits of two interpretations, a view which is favourable to the subject should be adopted. The fact such an interpretation is also in consonance with ordinary notions of equity and fairness would further fortify the Court in adopting such a course".

The facts of the present case are different. Here the wording of the Schedule Entry on drugs is very clear and unambiguous. There are no two schedule entries and no two views involved in the present case. Also the products are recognized as devices which further dispels of any confusion or misinterpretation.

[6] **Bharat Vijay Mills Ltd V/s. Commissioner of Commercial Taxes (and another case) (85 STC 23) :**

It was held that" *if an article is to be taxed and may fall within two entries , the entry which is more beneficial to the assessee will have to be accepted as applicable to the article in question ".*

Such is not the case in the present dispute. The wording of the entry is clear. There are no two entries which are applicable. The product is recognized as a device and not as a drug.

[7] **Southern Gas Ltd. v/s. State of Kerala (139 STC 504] :**

Medical Oxygen and Nitrous Oxide were held to be taxed as 'medicine' and not under 'liquefied gases' under the Kerala General Sales Tax Act.

The wording of the entry on drugs is different under the Kerala General Sales Tax Act. Hence, the ratio of the above case cannot be made applicable to the present case.

The product 'stent' does not in the first place satisfy the four fold test of diagnosis, treatment, mitigation or prevention. Hence, it cannot be said to be a drug as understood by the entry C-29/C-29(a).

In pursuance of sub-section (iv) of clause (b) of Section 3 of the Drugs & Cosmetics Act, 1940, the Central Government has notified sterile devices intended for internal or external use in human beings as drugs with effect from 6.10.2005. This notification mentions at serial nos. (i) and (ii) the following products namely :

(i) Cardiac Stents **(ii)** Drug Eluting Stents

This notification having identified stent as a device, the debate about whether stent is a drug or device has been put down to rest.

Under the Maharashtra Value Added Tax Act, 2002, we have an independent entry w.e.f 1/5/2005 which covers such devices notified by the Central Government for the purpose of sub-clause (iv) of clause (b) of Section 3 of the Drugs & Cosmetics Act, 1940. In view of the above notification, with effect from 6.10.2005 the product 'stent' gets covered by Schedule entry C-29A (a) of the Maharashtra Value Added Tax Act, 2002 which pertains to devices notified from time to time by the Central Government. The rate of tax for the purpose of this entry is 4%.

Now, this product 'stent' has been notified as a 'device' w.e.f. 6.10.2005. The earlier notification on devices which was valid up to 5.10.2005 issued by the Central Government did not include the product. Hence, now the question arises as regards the schedule entry and rate of tax for the period 1.4.2005 to 5.10.2005. The answer to this question lies in the notification itself.

The product is notified as a device which in other words means that the product is regarded as a device and is not a drug in the form of a device. It is also discussed in the earlier part of this order that the product does not qualify for the test as laid down in the entry C-29/C-29(a) of the Act. It can thus be safely said that the product is not a drug. But it is a medical device. Hence it will not fall under the entry on drugs.

The product gets covered by the Schedule entry C-29A (a) only with effect from the date of notification i.e. 6.10.2005. As regards the period prior to 6.10.2005, the product not being so notified for the purpose of sub clause (iv) of clause (b) of section 3 of the Drugs & Cosmetics Act, 1940. It was also not notified by the State Government, for the purposes of the schedule entry C-107(8) which is for medical devices notified by the State Government. This non inclusion in either the schedule entry for drugs or the schedule entry for medical devices for the period 1.4.2005 to 5.10.2005, places the product in the residuary schedule entry E-1, thereby attracting tax @ 12.5%.

[2] Other Products

Applying the same law as declared above, the products such as Tracheostomy Tube, Endobronchial Tube, Performed Trancheal Tube, Connector Kit, Y Connector, Manifold Kit, etc. cannot be regarded as drugs.

The very names indicate their use as devices. They cannot be said to be drugs. They may be sold under a license granted under the Drugs & Cosmetics Act, 1940. But all the five conditions as put forth by the schedule entry C-29/C-29(a) need to be fulfilled in order to be placed in the category of drugs. The products do not pass the four fold test of diagnosis, treatment, mitigation or prevention of any disease or disorder. They cannot be said to cure any disease or disorder.

The products are medical devices or aids and implants. This fact is not disputed. Thus as regards the other products, the applicant's claim of "drugs" does not hold merit. The products do not qualify the test of a "drug" as specified in the schedule Entry C-29/C-29(a) of the MVAT Act, 2002. The use of the products is obvious as a device and not as a drug. Further to being devices, their non inclusion in the notification on medical devices and implants by both the Central and State Governments places the products out of the coverage of the entries C-29 [1-4-2005 to 30-4-2005] /C-29A (a) and C-107 (8) .In absence of any mention in either the schedule 'A' or 'C', the products get automatically placed in the residuary entry E-1 attracting tax @ 12.5% from 01/04/2005 itself.

06. <u>PROSPECTIVE EFFECT</u>

The applicant has prayed that in case the products are determined to be falling under neither drugs nor devices, his liability may be protected by giving the determination order a prospective effect i.e from the date of the determination order**.**

This prayer of the applicant is not acceptable as the schedule entries appear to me very clear and self

regards devices, only those devices which were notified by the Central and State Government were to be treated as taxable @ 4% for the purpose of the respective schedule entry.

The criterion to decide a product as drug was very well present in the schedule entry C-37 for medicine under the Bombay Sales Tax Act,1959 also. The issue is decided in a plethora of judgments and put to rest beyond doubt by various judicial pronouncements. In the determination order No.DDQ-11-2005/Adm-5/19/B-1 dt. 21/07/2005 in the case of M/s. Inox Products under the Maharashtra Value Added Tax Act, 2002, the issue is discussed in detail. In view of the above, I hereby reject the applicant's request for prospective effect.

07. <u>CONCLUSION</u>

In view of the elaborate discussion held herein above, I have to decide that the products presently under consideration are devices and not drugs within the meaning of Schedule Entry C-29/C-29(a) of the Maharashtra Value Added Tax Act, 2002.

The product "stent" being notified as a device under the Drugs & Cosmetics Act, with effect from 6.10.2005, the same gets covered by the schedule entry C-29A(a) of the Maharashtra Value Added Tax Act,2002 attracting tax @ 4% which is for such devices as notified for the purpose of the Drugs & Cosmetics Act. But the said device being not notified earlier to 6.10.2005, for the period starting from 1.4.2005 to 5.10.2005, it would get covered by the residuary schedule entry E-1 attracting tax @ 12.5%. The coverage of the said product under the entry on drugs is ruled out. For the period 1.4.2005 to 5.10.2005, the said device was neither notified for the purpose of schedule entry C-29[1-4-2005 to 30-4-2005] which then included devices and C-29A (a) nor for the purpose of schedule entry C-107(8) of the Maharashtra Value Added Tax Act, 2002. Hence for the period 1.4.2005 to 5.10.2005, the product falls under the residuary Schedule entry E-1 of the Maharashtra Value Added Tax attracting tax @ 12.5%.

As regards the other products, namely Inflation device, Cross it. PTCA guide wire, Connector kit,Y Connector, Manifold kit, the products definitely are not drugs but are devices. Also they are not notified for the purposes of Schedule entries C-29[1-4-2005 to 30-4-2005] which then included devices and C-29A (a) and C-107(8) which pertain to medical devices and implants. Hence, they would fall under the residuary Schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002 attracting tax @ 12.5% from 01/04/2005 itself.

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

ORDER

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

No.DDQ-11-2005/Adm-5/77/B-04 Mumbai, dt. 10.4.2006

The application for determination as regards the schedule entry and rate of tax applicable to the products posed for determination is decided as in the table herein below. The applicant's prayer for prospective effect is rejected.

SR NO	PRODUCT	1.4.2005 to 5.10.2005		6.10.2005 ONWARDS		REMARKS
		Schedule entry	Rate of Tax	Schedule Entry	Rate of Tax	
1.	Coronary stent vision.	E-1	12.5%	C-29A(a)	4%	Notified as a device but it is not a drug.
2.	Inflation Device	E-1	12.5%	E-1	12.5%	Not drug but a device.
3.	Cross it PTCA guide wire.	E-1	12.5%	E-1	12.5%	Not drug but a device.
4.	Connector Kit.	E-1	12.5%	E-1	12.5%	Not drug but a device.
5.	Y-Connector.	E-1	12.5%	E-1	12.5%	Not drug but a device.
6.	Manifold Kit.	E-1	12.5%	E-1	12.5%	Not drug but a device.

(B. C. KHATUA)

Commissioner of Sales Tax,

Maharashtra State, Mumbai.