Read : 1) Application dt.nil by M/s. Chheda Marketing.
2) Communication dt.06.10.2008 from the applicant.
3) This office letter dt.07.01.09, 22.01.20.09 calling the dealer for hearing.
4) This office letter dt.27.04.2009 calling for necessary details.
5) Communication dt.01.05.2009 from applicant.

Heard : Smt. Nikita Badheka, Advocate attended the hearing.

PROCEEDINGS

(u/s. 56 (1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ 11/2008/Adm-3/38/B-2 Mumbai, Date:29.08.2009

An application is received from M/s. Chheda Marketing of 11, Chandanwadi, Opp. Municipal School, Marine Lines, Mumbai–02, requesting determination of the rate of tax on the products sold in the invoices R/31 & R/186 bearing dates 29.4.2008 & 18.6.2008 respectively.

02. FACTS AND CONTENTION

The applicant is a registered dealer having TIN No.27650117397V under the Maharashtra Value Added Tax Act, 2002 (MVAT 2002). The applicant deals in spectacle glasses, spectacles and spectacle frames. The applicant is of the opinion that the products are covered by the notification dt.23/11/2005 issued for the purposes of the schedule entry C-107(8). The entry no. 5 of the said notification refers to the excise heading 9004 which notifies *"Spectacles, Correctives, Protective or other"*. The applicant contends that,

- Going by the common parlance understanding goggles are nothing but the protective glasses and goggles is only commercial terminology. The applicant therefore states that what the applicant sells, are all spectacles items i.e. Frames, glasses, spectacles and goggles which are nothing but protective spectacles liable to tax @ 4%. However Enforcement Branch Officers have visited the place of the applicant and calculated item of goggles as taxable @ 12.5% and the applicant has been made to pay the taxes at 12.5%. The applicant has not collected tax @ 12.5% on such items. In view of this dispute the applicant seeks determination of the rate of tax on sale of protective glasses called goggles [As per Oxford Dictionary – "*Goggles – closefitting protective glasses.*"].
- It is contended that goggles are nothing but protective glasses. It is further informed that they have acted in good faith based on the clarification received from the Jt. Comm. (HQ)I, Maharashtra State, Mumbai and have collected and paid 4% tax on sales of goggles/sunglasses. By way of abundant caution, it is requested that prospective effect be given to the order if the clarification given by the Jt. Commissioner of Sales Tax (HQ) I is not followed in the determination proceedings.

03. HEARING

The case was taken up for hearing on 27/1/2009. Smt. Nikita Badheka (Adv.) attended the hearing. She submitted that the product is protective sunglasses covered by the notification entry 9004 & is taxable @ 4%. She agreed to submit the position of taxation in respect of the product in other States. She also submitted that she would provide the correlation of the products mentioned in the invoice and the product catalogue.

04. OBSERVATIONS

I have gone through all the facts of the case. The issue before me pertains to the determination of the rate of tax on the product "sunglasses" [referred to as 'goggles' by the applicant]. The contention of applicant is with respect to coverage of the product under schedule entry C-107(8) which notifies certain excise headings and the products covered by them as "medical devices and implants". The entry reads thus : *Medical devices and implants as may be notified from time to time by the State Government in the Official Gazette.* The relevant portion of the notification to which the applicant has laid claim is -

Sr. no.	Heading no.	Sub heading no.	Tariff Item no.	Name of the Commodity
5	9004	-	-	Spectacles, Correctives, Protective or other

It can be seen that the schedule entry is for only those ***Medical devices and implants*** which have been included in the notification issued for the purposes of the schedule entry. The notification is based on the classification of products under the Central Excise [CE] Act. Hence it is necessary to have a look at the following :

1. Information of the products as provided by the applicant.
2. Evidence in respect of the Central Excise heading applicable to the products.

However, it is seen that no evidence in respect of the CE heading applicable to the products is provided by the applicant. The product as termed by the applicant is protective sunglasses and it is contended that the same is covered by the description *"Spectacles, Correctives, Protective or other"* against the CE heading 9004 of the notification for the purposes of the entry for ***Medical devices and implants***. Hence, I proceed to ascertain the determination by going through the literature of the products in terms of the position under CE and HSN.

The products put up for determination are of the Brands – Versace and Ray-Ban. On the bills raised by the applicant, the Code nos. of the product appears. The Catalogue of the Brand 'Versace' is named as *"2006 Optical Collection & Sunglass Update"*. The Catalogue is divided in 3 parts as *"2006 Optical Collection"*, *"2006 Sunglasses Update"* and *"Pop & Packaging"*. There is an index at the end showing the product codes mentioned in the Catalogue. The second portion is for sunglasses as is understood from the heading. The third portion is about posters, counter cards and packing cases. There is no detailed information about the first part. In the invoice R/31–dt.29.4.2008, Versace products find a mention. The Internet was checked for certain information on the codes mentioned in the bill and falling in the first part of the Catalogue. It was seen that some codes falling in the first part of the Catalogue were also referred to as "sunglasses". The Catalogue of the Brand Ray-Ban is named as *"Ray-Ban Sunglasses 2008 Collections"*. From the name itself, it is evident that the products featured therein are "sunglasses". In the invoice R/186–dt.18.06.2008, Ray-Ban products find a mention. The Catalogue gives information of the products. The product is termed as "The ultimate fashion accessory". It is further mentioned therein that –

"The accepted standards for UV protection in the non prescription sunglasses category have been set by the American National Stands Institute (ANSI). ANSI standards state that the ultra violet transmittance for UVA rays for all non prescription sunglasses should be …………………….. All ray-Ban lenses checks harmful UV rays & reduce level of infrared rays"."

From the above para, it is seen that the Ray-Ban products are sunglasses, more appropriately "non prescription sun-glasses". As regards bill no. R/31, it is seen that some of the products of are sunglasses while others could not be ascertained. Now, the applicant desires determination in respect of the product "sunglasses". Hence, I restrict these proceedings to the category of sunglasses. Further, during hearing, it was submitted that the products are protective sunglasses. In the applicant's submission, it has been mentioned that the products are protective glasses called goggles. Thus, the applicant has used the words "goggles" and "sunglasses". Hence, it would be useful if the meaning of the words Spectacles, Goggles and Sunglasses is ascertained.

Eye protection is protective clothing for the eyes, which comes in many types depending upon the threat that is to be reduced. The threats can be particles, light, wind blast, heat, sea spray or some type of ball or puck used in sports. **Glasses** (also called **eyeglasses** or **spectacles**) are frames bearing lenses worn in front of the eyes, normally for vision correction, eye protection, or for protection from UV rays. Not all glasses are designed solely for vision correction but are worn for protection, viewing visual information (such as stereoscopy) or simply just for aesthetic or fashion values.

Variation in glasses

Reading glasses : Magnifying lenses for reading that are used to treat mild hypermetropia and presbyopia can be bought off the shelf, but most spectacles are made to a particular prescription, based on degree of myopia or hypermetropia combined with astigmatism. Lenses can be ground to specific eyes, but in most cases standard off-the-shelf prescriptions suffice, but require custom-fitting to particular frames.

Bifocals, trifocals and progressive lenses : As people age, their ability to focus is lessened and many come to need multiple-focus lenses, bifocal or even trifocal to cover all the situations in which they use their sight. Traditional multifocal lenses have two or three distinct viewing areas, each requiring a conscious effort of refocusing. These were originally separate lenses. Some modern multifocal lenses give a smooth transition between these lenses, unnoticeable by most wearers. Other spectacle wearers sometimes have lenses specifically intended for use with computer monitors at a fixed distance. On the other hand, many people simply have several pairs of spectacles, one for each task or distance, with specific glasses for reading, computer use, television watching, and writing.

Extreme magnification (bioptics) : A form of glasses with extreme magnification to improve the distance vision of those with severe eyesight impairment, especially people with albinism, are known as bioptics or a bioptic telescope. They may take the form of self-contained glasses that resemble goggles or binoculars, or may be attached to existing glasses.

<u>TYPES</u>

1. **CORRECTIVE SPECTACLES** have lenses shaped to correct some kinds of vision abnormalities. Corrective lenses are used to correct refractive errors of the eye by modifying the effective focal length of the lens in order to alleviate the effects of conditions such as; nearsightedness (myopia), farsightedness (hyperopia) or astigmatism. Another common condition in older patients is presbyopia

which is caused by the eye's crystalline lens losing elasticity, progressively reducing the ability of the lens to accommodate (i.e. to focus on objects close to the eye). Prescription lenses, made to conform to the prescription of an ophthalmologist or optometrist, are used to make prescription glasses, which are then verified correct using a professional lensmeter.

2. **PROTECTIVE SPECTACLES : Safety glasses** are a kind of eye protection that protects against flying debris but may also protect against visible and near visible light or radiation. They can vary in the level of protection they provide. For example, those used in medicine may be expected to protect against blood splatter while safety glasses in a factory might have stronger lenses and a stronger frame with additional shields at the temples. The lenses of safety glasses can also be shaped for correction or tinted to protect against visible and near-visible radiation.

   Safety glasses with side shields : The American National Standards Institute has established standard ANSI Z87.1 for safety glasses in the United States, and similar standards have been established elsewhere. OSHA provides guidance on the type of safety eyewear that should be used for a particular application. ***Some safety glasses are designed to fit over corrective glasses or sunglasses. They may provide less eye protection than goggles, face shields or other forms of eye protection,*** but their light weight increases the likelihood that they will actually be used. Recent safety glasses have tended to be given a more stylish design, in order to encourage their use. Corrective glasses with plastic lenses can often be used in the place of safety glasses in many environments; this is one advantage that they have over contact lenses.

   Safety glasses for welding : These are styled like wraparound sunglasses, but with much darker lenses, for use in welding where a full sized welding helmet is inconvenient or uncomfortable. These are often called "flash goggles", because they provide protection from welding flash. Worker safety eyewear is available in various lens colors and/or with coatings to protect or enable eyesight in different lighting conditions, particularly when outdoors.

   Goggles or Safety Glasses are forms of protective eyewear that usually enclose or protect the eye area in order to prevent particulates, infectious fluids, water or chemicals from striking the eyes. Many types of goggles are available as prescription goggles for those with vision problems. Goggles are available for horses used in speed sports such as horse racing. Goggles have been used on military working dogs, for protection in harsh conditions, such as sandstorms and rotorwash from helicopters.

   TYPES OF GOGGLES :

   Cold weather: Most modern cold-weather goggles have two layers of lens to prevent the interior from becoming "foggy". The reasoning behind dual layer lens is that the inner lens will be warm while the outer lens will be cold

   Swimming: Must be watertight to prevent water, such as salt water when swimming in the ocean, or chlorinated water when swimming in a pool, from irritating the eyes or blurring vision. Allows swimmers to see clearly underwater. They will not be usable more than a few feet underwater, because the water pressure will press them tightly against the face. Examples of these include the Swedish goggles.

   Power tools: Must be made of an unbreakable material that prevents chunks of metal, wood, plastic, concrete, & so on from hitting or piercing the eye. Usually has some sort of ventilation to prevent sweat from building up inside the goggles & fogging the surface.

   Blowtorch goggles: These protect the eyes from glare and flying sparks and hot metal splashes while using or near as blowtorch. They are not dark enough for arc welding.

   Motorcycle riding and other open-air activities: Prevents insects, dust, and so on from hitting the eyes.

   Laboratory and research: Combines impact resistance with side shields to prevent chemical splashes reaching the eyes. May also include laser protection which would be covered by EN 207 (Europe) and ANSI Z 136 (United States). Examples of these include red adaptation goggles.

   Racquetball: Protect the eyes from racquets swinging in an enclosed area and from impact from hard rubber ball.

   Astronomy and meteorology: dark adaptor goggles are used before going outside at night, in order to help the eyes adapt to the dark.

Winter sports: Protect the eyes from glare and from icy particles flying up from the ground.
Basketball: Several players have worn goggles during play; they prevent a fellow player from scratching or hitting the eyes when trying to grab the basketball.
Aviation: In open cockpit aircraft, such as old biplanes, aviators would wear goggles to help protect from the wind and are still in use today. Examples of these include the AN-6530 goggles.
Virtual reality: A virtual reality headset, sometimes called "goggles", is a wrap-around visual interface to display computer output. Commonly the computer display information is presented as a three-dimensional representation of real-world environments.

3. **SPECIAL GLASSES** [3d Glasses [Special Spectacles]] are used for viewing 3-D images or virtual reality. The illusion of 3 dimensions on a 2 dimensional surface can be created by providing each eye with different visual information. 3-Dspectacles made of cardboard and plastic are distributed at 3-Dmovies. Classic 3Dglasses create the illusion of 3 dimensions when viewing specially prepared images. Electronic 3Dspectacles uses electronic shutters. Virtual reality glasses & helmets have separate video screens for each eye and a method for determining the direction the head is turned. Some 3-Dspectacles uses polorized filters.

4. **SPECTACLES AS A FASHION ACCESSORY :** They are available in a wide range of styles, materials, and even designer labels. They are a major part of personal image and expression.

5. **OTHER TYPES OF GLASSES :** Other kinds of spectacles include tinted protective lenses, ranging from sunglasses, which protect the eye from glare and ultraviolet radiation, to specialized units that protect against extreme brightness and are used for welding and viewing eclipses.

SUNGLASSES
Sunglasses protect against high levels of visible and ultraviolet light. Sunglasses or sunglasses are forms of protective eyewear that usually enclose or protect the eye corneas in order to prevent strong light and UV Rays from penetrating. They can sometimes also function as a visual aid, as variously termed spectacles or glasses exist which feature lenses that are colored, polarized or darkened. Sunglasses have long been associated with celebrities and film actors primarily from a desire to hide or mask their identity. ***Sunglasses vary greatly and many offer more style than protection***. It is possible to have lenses that look very dark and yet offer little ultraviolet protection. Some sunglasses with interchangeable lenses have optional clear lenses to protect the eyes during low light or night time activities and a colored lens with UV protection for times where sun protection is needed.
Water sunglasses also known as surfing sunglasses, surf goggles and water eyewear consist of eyewear specially adapted to be used in turbulent water, such as the surf. These sunglasses are used in water sports such as surfing, windsurfing, kiteboarding, wakeboarding, kayaking, jet sking, Bodyboarding, and water skiing.
Prescription Sunglasses (term used by most laymen) or sun-spectacles (the term used by some optometrists), which combine protection from bright light with vision correction, have become fairly common. Sunglasses may be made with either prescription or non-prescription lenses that are darkened to provide protection against bright visible light and, possibly, ultraviolet (UV) light. Some spectacles have photo-sensitive lenses that darken as the light grows brighter. They are sunglasses and indoor spectacles in one.There are three sunglass standards. Australian - AS 1067, UK - ANSI Z80.3-1972 & European - EN 1836:2005. Prescription glasses, clear or tinted, are excluded from the AS/NZS 1067 but may still provide protection against UVR. The standard defines five categories of lenses :

- Fashion spectacles that are not sunglasses and provide very low reduction in sunglares with some UV protection.
- Fashion spectacles that are not sunglasses and provide a limited reduction in sunglare with some UV protection.
- Sunglasses that provide a medium level protection against sunglare with good UV protection.
- Sunglasses that provide a high level of protection against sunglare with good UV protection.
- Sunglasses for special purposes that provide a very high level of protection against sunglare with good UV protection.

From the above, it can be well understood that **spectacles, sunglasses and goggles** are different and have distinguishing features. The words cannot be used interchangeably. I may also refer to the meanings under the Webster's Dictionary as follows :

Spectacles - a pair of lenses, mounted in a light frame which rests on the bridge of the nose and hooks or rests behind the ears, designed to correct defects of vision or to protect the eyes.
Sun-glasses - spectacles with lenses which are tinted to protect the eyes from glare.
Goggles - a protective mask for the eyes with transparent eyepieces, worn by skin-divers, motorcyclists, welders etc.

From the above definitions, it is seen that "goggles" are not referred to as spectacles. But sunglasses are referred to as a type of "spectacles". Even the material on the Internet shows that goggles are always referred to as a protective eyewear. We have also seen that goggles are characterized by the fact that they are designed to enclose the eye area while spectacles or sunglasses do not form such a complete enclosure for the eye area. Thus, spectacles or sunglasses are one of a kind with respect to their form or make. The applicant has referred to the present products as "goggles". From what has been reproduced above as well as from the common parlance understanding, one can very well see that "goggles" and "sunglasses" are different. The products have been rightly referred to as "sunglasses" during hearing. The present products definitely cannot be said to be "goggles" which fall in the category of "safety glasses". From the information about the products given by the applicant, we have seen that the products are non-prescription sunglasses. Even if the prefix "protective" is added to "sunglasses", the products remain "sunglasses".

Having understood the nature of the products put up for determination, I proceed to ascertain the claim of the applicant that the products are covered by the wording *"Spectacles, Correctives, Protective or other"* used in the notification issued for the purposes of the schedule entry for *Medical devices and implants***.** I have already mentioned earlier that the applicant has not given any evidence as to the CE Tariff Heading under which the products are cleared. Hence, let me ascertain the same by referring to the description under HSN and CE.

Central Excise	HSN	Notification
9004 Spectacles, goggles and the like, correctives, protective or other **9004 10 00** - Sunglasses **9004 90** - Other : **9004 90 10** --- Passive night vision goggles **9004 90 20** --- Prismatic eyeglasses for reading **9004 90 90** --- Other	**9004** Spectacles, goggles and the like, correctives, protective or other **9004.10 -** Sunglasses **9004.90 -** Other	**9004** Spectacles, Correctives, Protective or other

It can be seen that the description for the purposes of the notification does not cover the words "*goggles and the like*". We have seen that even though the applicant has referred to the product as "goggles", the product is not "goggles". Hence, the exclusion of "goggles" would not affect the classification.

The words used for the heading under CE or HSN are *Spectacles, goggles and the like, correctives, protective or other.* The sub-heading covers "*sunglasses*". Hence, it needs to be ascertained whether sunglasses are covered by the words ***"spectacles"*** or ***"goggles"*** or ***"and the like"***. In the preceding para, I have discussed as to how goggles differ from spectacles and sunglasses and hence the possibility of sunglasses being covered by the expression ***"goggles"*** is ruled out. We have also seen how spectacles or sunglasses are one of a kind with respect to their make. Hence, it would fit in the scheme of things to say that the sub-classification "sunglasses" in the main heading is with respect to the category "**spectacles**". The words ***"and the like"*** would cover articles such as face shields or other forms of eye protection, of the kind as spectacles and goggles. Thus, sunglasses are a type of spectacles. My observations find support from the case of Ramchand Choithram Sons v. Collector of C. Ex. [50 ELT 193], the relevant portion of which may be reproduced as follows :

"*18. In this connection it is seen that in the encylopaedia Britanica entry regarding eye glasses also called spectacles includes the following words : "glasses the lenses are tinted to reduce light transmission and avoid glare".*

19. In the Indian Standard Specification I.S. 5695-1970 the relevant entry refers to spectacle lenses as basically opthalmic lenses and the entry 4.1 mentions that spectacle lenses shall be either tinted and further mentions that they may be of various types including plane lease. The Indian Standard glossary entry 3. 52 also refers to place lenses.

20. In the Indian Standards of glossary terms I.S. 2860 Part I 1976 entry 3.68 mentions sun glasses or spectacles are of filtering action to reduce the intensity in general.

*21**.** These definitions show that the term "spectacles" includes sun glasses and the spectacle lenses or sun glass lenses can be even plane lenses i.e. lease with 'O' power.* ***In other words sun glasses are a type of spectacles*** *in which the lenses are tinted to reduce light transmission and avoid glare."*

We may also look at the HSN for clarity :

"This heading covers articles (usually comprising a frame or support with lenses or shields of glass or other material), for use in front of the eyes, generally intended either to correct certain defects of vision or to protect the eyes against dust, smoke, gas, etc., or dazzle; it also covers spectacles for viewing stereoscopic (three-dimensional) pictures.

Spectacles, pince-nez, lorgnettes, monocles, etc., used for correcting vision, generally have optically worked lenses.

Protective spectacles and goggles generally consist of plane or curved discs of ordinary glass (whether or not optically worked, or tinted), of safety glass, of plastics (poly(methyl methacrylate) polystyrene, etc.), of mica, or of metal (wire gauze, or slotted plates). These articles include sunglasses, spectacles used for mountaineering or winter sports, goggles for airmen, motorists, motor-cyclists, chemists, welders, foundry workers, moulders, sand-blast operators, electricians, roadmen, quarrymen, etc.

The heading also includes goggles for underwater use; removable spectacles (e.g., sunglasses) for fitting to other spectacles (generally corrective spectacles) and used either as protective filters or, in some case, as additional corrective lenses; polarizing spectacles fitted with lenses of plastics for viewing three-dimensional films (whether or not with a paperboard frame).

What the above conveys is that the heading covers articles of the following types :

- Articles to correct certain defects of vision
- Articles to protect the eyes against dust, smoke, gas, etc., or dazzle.
- Articles for viewing stereoscopic (three-dimensional) pictures.

Applying the above principles, it can be seen that the description for the purposes of our notification i.e., *Spectacles, Correctives, Protective or other* covers the following :

- Corrective Spectacles used for correcting vision.
- Protective Spectacles such as sunglasses, spectacles used for mountaineering or winter sports.
- Other Spectacles used for viewing three-dimensional films.

The term "sunglasses" includes both prescription and non-prescription sunglasses. In the present case, as mentioned earlier, the products are non-prescription sunglasses. Hence, they would be covered by the expression *Spectacles, Protective* used for the purposes of the notification and not by the words *Spectacles, Correctives.*

After having ascertained that the product sunglasses is covered by the notification, I cannot help but refer back to the schedule entry for the purposes of which the notification has been issued. It is seen that the notification under which the present products are covered is for the purposes of the entry for "***Medical devices and implants***". Hence, the first test to be satisfied is that the product should be a medical device or a medical implant. The general meaning or the common parlance meaning of the terms could be seen as follows :

Medical Device means a product - any instrument, apparatus, appliance, or other article which is used for medical purposes in diagnosis, therapy or surgery.

Medical Implant is an object or material inserted or grafted into the body for prosthetic, therapeutic, diagnostic, or experimental purposes.

Having understood the meaning as above, it is seen that to cover in the notification, the products should first pass the test of the words used for the purposes of the schedule entry. The products put up for determination are sunglasses, more appropriately "non-prescription sunglasses". These products can in no terms be said to be "***Medical devices and implants".*** The schedule entry comes before the notification. Since the schedule entry itself bars entry to the product, the inclusion in the notification does not act otherwise. There may be instances when a particular heading is covered by the notification issued for the purposes of any entry, however considering the import of the entry any particular good covered by the heading and thereby the notification does not deserve to be placed in the entry. Any particular Excise Heading covers a number and variety of articles. It would not be possible and practicable for the Legislation to identify all such possibilities wherein ***some goods are not covered by the schedule entry but are covered by the heading*** which is sought to be included. In such circumstances, the words used for the purposes of the schedule entry should be looked into and accordingly it should be ascertained whether going by the nature of the product, the same is covered by the entry or not. My predecessors and myself have taken this stand in the case of the schedule entry for **"industrial inputs".** In the present case, the applicant is aware of the fact that the products are non-prescription sunglasses which is commonly worn by people and more often referred to wrongly as "goggles". It is common practice to wear sunglasses during the summer season and they are just bought off the shelf. This being so, the coverage of the products in the notification would not place such products in the category of "***Medical devices and implants".*** It would be absurd to say that sunglasses are medical devices. It is also seen that the products sunglasses are placed in the 12.5% category in other States too. The tax rate for Ray Ban sun glasses & other sunglasses is 12.5% vide entry no. 69 of Part C to I Schedule to Tamil Nadu Value Added Tax Ac, 2006 with effect from 1.1.2007. Under the Rajasthan Value Added Tax Act, the tax rate on sunglasses is 12.5% as sunglasses and spectacles are different.

There being no specific schedule entry covering the applicant's products, they would be covered by the residuary schedule entry E-1, thereby taxable @12.5%.

05. PROSPECTIVE EFFECT

The applicant has requested that if the products are held as not covered by the schedule entry for "***Medical devices and implants",*** then the determination may be given prospective effect. The prayer of the applicant needs to be weighed in the light of the provisions under the Act as also the facts of the case. It needs to be seen whether there truly existed a statutory misguidance. In support of hiss plea, the applicant has submitted that he was guided by the clarification issued by the Department that sunglasses are covered by the notification.

In the present situation, it is seen that the product is covered by the notification issued for the purposes of the schedule entry. However, the schedule entry does not cover the products as the schedule entry is for specified types of products only. The applicant should have been aware of the fact that the impugned entry is for "***Medical devices and implants"***. However, the applicant is guided by the inclusion of the products in the notification. Further, the applicant has claimed that he has relied on the clarification issued by the Department. Considering all the points in totality, it is felt that the inclusion of the products in the notification as well as the clarification can be said to mislead the applicant to some extent.

In a few determination orders, I have, on the basis of the circumstances of each case, taken the stand that 'genuine statutory misguidance is one of the basis of granting prospective effect. I am inclined to accept the prayer of the applicants that, prospective effect may be granted in view of the specific clarification issued to them. It is hereby ordered that the liability of the applicant is protected till the date of this order, if the applicant has not collected taxes @12.5%.

06. In view of the deliberations held hereinabove, it is ordered as follows :

ORDER

(U/s. 56 (1)(e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ 11/2008/Adm-3/38/B-2 Mumbai, Date:29.08.2009

The product "non-prescription sunglasses" are covered by the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby attracting tax @ 12.5%. In respect of the applicant's prayer for prospective effect, it is herewith ordered that the determination order is, for reasons as discussed in the order, made prospective from the date of this order if the applicant has not collected taxes @12.5% on the sales of the products.

(SANJAY BHATIA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.