

Read : Application dt.01.06.2012 by M/s. Philips Electronics India Ltd.

Heard : Sh. Vinod Raut, Taxation Manager and Sh. Kushal Bhanushali, Assistant Manager (Commercial Quality).

PROCEEDINGS

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

No.DDQ-11-2012/Adm-6/16/B- 2

Mumbai, dt. 27/10/2015

M/s. Philips Electronics India Ltd., holder of TIN 27690283730V, situated at 2nd floor, Technopolis Knowledge Park, Mahakali Caves Road, Andheri East, Mumbai-400093, seek determination of the rate of tax applicable to the product "T-5 Energy Saver Lamps" sold under description "TL5 Essential 14W/830 1SL/40" in invoice no.9519290714 dt.19.05.2012.

02. FACTS AND CONTENTION

The application states thus :

- The applicant company is the manufacturer of all types of electrical/electronic products with manufacturing units at Vadodara in Gujarat and Mohali in Punjab. The applicant is selling the product-T5 energy saver lamps in the State of Maharashtra by levying VAT @ 12.5%. However, it is informed that one of their competitors Havells India Ltd. is selling the same T5 Lamp in the State of Maharashtra by levying VAT @ 5%. Therefore, the applicant seeks to know the rate of tax payable on sales of T5 Energy Saver Lamps in the State of Maharashtra. It is submitted that T5 Strip Fittings of Philips, which uses T5 Lamps are Energy Saver Products. As per the comparison done with other products, these have 70% lesser mercury content and also save 45% energy compared to conventional Tube Lights similar to Compact Fluorescent Lamps (CFL-schedule C Serial No.111- VAT rate applicable is 5%).
- By considering the above facts and clarification letter issued by the product Manager, product-T5 Energy Saver Lamps-Green-T5 Strip Fittings is nothing but a Compact Fluorescent Lamp (CFL-Schedule C serial No.111) and hence VAT rate applicable should be 5%.
- In addition to what is stated above, the letter by the Product Manager states that-*"Also packaging of T5 lamp is environment friendly as 57% less paper is utilized. Slimmer dimensions of T5 lamp also enable savings in fuel consumption to tune of 75%."*

Through letter dt.25.06.2013, the applicant has sought to make a submission. The submission seeks to dwell on the energy policy and the incentives by the Government. The extracts therefrom with regard to the issue of determination of rate of tax on "T-5 Energy Saver Lamps" are thus :

- The Government of Maharashtra ("GOM") has initiated various measures to address concerns in relation to Energy, security, Energy conservation and Environmental efficiency ["Areas of Key Concerns"] of various energy sources. The extension of fiscal and tax incentives to renewable energy devices such as windmill, solar energy devices, biomass devices are examples of the commitment by the GOM for energy sufficiency and sustainability. This very commitment saw the GOM granting duty concessions from levy of Value Added Tax ("VAT") to Compact Fluorescent Lamps (CFLs) by bringing them in the schedule of goods taxed at the rate of 5% under the Maharashtra Value Added Tax Act, 2002 ("MVAT Act").
- While granting of concessional VAT rate to CFL is a laudable step, however, FTLs such as T-8 and T-5 which are equally energy efficient and cost effective devices continue to be taxed at the higher VAT rate of 12.5%. A concessional VAT rate to T-8 and T-5 FTLs (similar to CFLs) in the State of Maharashtra will go a long way in helping the State achieve energy conservation and security. This will also greatly help in making accessible technologically advanced T-8 and T-5 FTLs to the masses at large.
- By way of this Representation, Philips India seeks to draw urgent attention of Finance Department, Government of Maharashtra ("Finance Department") to grant fiscal and tax incentives by way of reduction in VAT rate on the sale of T-8 and T-5 FTLs in the State at par with CFLs.

- Incentives to T-8 and T-5 FTLs will be helpful in addressing the power shortage scenario in the State of Maharashtra. Technically speaking T5 (TL-5) lamp is a Tubular Fluorescent Lamp available in 2feet (563.2 mm) or 4feet (1163.2mm) and a CFL (Compact Florescent Lamp) is the same tube which is twisted and circled to make it compact or small in size and supplied with in-built electronic choke. The T5 lamps also require electronic choke which is put in a Patti or Batten fitting. Also the T5 lamps prove to be more energy efficient than CFL lamps due to larger spread of light and offer more visual comfort.
- The basic material used for making a CFL or a T5 lamp is also the same as : Glass Tube, Hg, Phosphor Coating, Filament etc. However the amount of light generated by T5 is more than CFL lamps on consuming same amount of power this is evident from the test reports attached for both the sources.
- The 14W CFL lamps typically generates 60 lumens/watt while a same wattage 14W T5 lamp generates 80 lumens/watt i.e. 12% more light output than CFL lamp with double the life time.
- The CFL lamps are the replacement of GLS lamps 60W-100W while the T5 lamps offers best replacement of T8 lamps which consumes more power and produce less light.
- A chart depicting the comparison of various technologies in lighting devices have been drawn hereunder:

Technology Comparison Chart between various energy saving lighting devices				
Technology	T5	T8	T12	CFL
Wattage [W]	28W	36w	40W	14W
Lumen [lm]	2600	2450	2450	800
Efficacy [lm/W]	87.5	68.1	61.25	57.1
Lifetime [hours]	15,000	15,000	10,000	8,000
Lights needed for 50,000 hours of use	3	3	5	6
MRP	120	48	48	150
Total cost of lighting 50,000 hours	360	144	240	900

- The above chart clearly reflects that T-8 and T-5 FTLs are superior and technologically advanced energy saving devices than the outdated T-12 FTL in terms of energy utilization and environmental benefits. Further, it may not be out of place to mention that T-8 and T-5 FTLs are at par with energy efficient CFLs. While, they may consume slightly high electricity than CFLs, they definitely generate more illumination and are also cost effective. Hence, these FTLs stand on equal footing when compared to other energy efficient lamps like CFLs and thus deserve similar treatment (fiscal concession) as granted to CFLs in the State.
- Another area where these FTLs, specifically T-8, deserve merit is that it can be installed/used in the existing light fitting (as used by T-12). Thus, its promotion can transform the energy consumption situation in a greater manner as there would not be any initial set-up cost or transitional cost.
- Given these facts promoting T-8 and T-5 FTLs can prove to be an immediate replacement over energy inefficient T-12 FTL and can help in capturing a significant portion of the FTL market. Put together, these FTLs can aid in achieving energy efficiency in a swift manner.
- Reduction in VAT rates of T-8 and T-5 FTLs will also be in conformity with the present approach of the GOM towards promotion of energy efficient lighting devices in the State, such as CFLs. Such step shall help in making T-8 and T-5 FTLs more accessible to the general public in the State of Maharashtra.
- It is therefore submitted that the Finance Department, GOM should consider reduction in VAT rates as levied under MVAT Act on the sale of T-8 and T-5 FTLs, at par with CFLs.
- Thus, reduction of VAT on T-8 and T-5 FTLs by the GOM will be consistent with the approach of the Central Government.
- Incentives to T-8 and T-5 FTLs shall greatly contribute towards environmental efficiency
- One of the most important environmental advantages of T-8 and T-5 FTLs are that they promote the use of electronic ballast. The electronic ballast does not contain mercury and lead which are harmful to the environment, hence, leading to environment protection. Some of the other benefits to the environment that may ensure from the use of T- 8 and T-5 FTLs include:
 - **Energy savings:** T- 8 and T-5 FTLs are energy efficient devices. Holistically they consume less energy and generate more illumination in comparison to other lighting devices.
 - **Completely green :** The most significant feature of T-8 and T-5 FTLs is that they work on electronic ballast and use solid mercury pills which are eco friendly and having less than 4.5 gms mercury content. Hence, they are more environment friendly and offers to achieve a green environment situation.

- It is therefore prayed that the Finance Department should grant fiscal and tax incentives on T-8 and T-5 FTLs by way of reduction in VAT rate (as levied under MVAT Act) on the sale of T-8 and T-5 FTLs within the State. This reduction in the VAT rates on T-8 and T-5 FTLs would bring it at par with the VAT rate applicable on sale of CFLs in the State.

03. HEARING

Sh. Vinod Raut, Taxation Manager and Sh. Kushal Bhanushali, Assistant Manager (Commercial Quality) attended the hearing and submitted that 'T5' tubes are covered by the schedule entry C-111 - 'Compact Fluorescent Lamps'. It was brought to their notice that the entry very specifically covers 'Lamps' and not 'Tubes'. Hence, it was submitted that both CFL and T5 are manufactured from the same glass tube and the same manufacturing process as CFL, without any more usage of mercury in T5 but the shapes are different. In T5, the Lumen efficiency is 45% more than CFL. It was further submitted that they are currently charging 12.5% on the product while competitors like Havells India are charging 5% on the same product.

04. OBSERVATIONS

I have gone through the facts of the case. The product put forth for determination is "T-5 Energy Saver Lamp". It is claimed that the impugned product is covered by the schedule entry C-111 of the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002) which reads thus -

C-111	Compact Fluorescent Lamps	4%	1.7.2009 to 31.3.2010
	Compact Fluorescent Lamps	5%	1.4.2010 to 31.3.2015
	Compact Fluorescent Lamps and LED bulbs	5%	1.4.2015 to date

The bill presented for determination is of dt.19.05.2012. Therefore, the entry to look for is 'Compact Fluorescent Lamps', the one prior to the inclusion of LED bulbs into the entry. The important aspect of the present application is that claim is being laid to the aforesaid schedule entry in terms of the impugned product being a 'CFL' and at the same time, an earnest request comes across to consider classification of the impugned product at par with the 'Compact Fluorescent Lamp' of the aforesaid entry. As can be seen from the entry as reproduced above, the same is very unambiguous and clear in its import. A plain reading of the entry, during the relevant period, conveys that the entry covers 'Compact Fluorescent Lamps'. To gain coverage under the said entry, the impugned product should be a 'Compact Fluorescent Lamp (CFL)'. Though the applicant prefers to describe the product as a 'Lamp', it is actually a 'tube light'. A tube light is essentially different from a Compact Fluorescent Lamp. And I find, world across, the products are recognized as distinct products. To illustrate, we may look at the following :

• WWW.ENERGY.GOV (OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY, US)

Light from a fluorescent lamp is first created by an electric current conducted through an inert gas producing ultraviolet light that is invisible to the human eye. The ultraviolet light in turn interacts with special blends of phosphors coating the interior surface of the fluorescent lamp tube that efficiently converts the invisible light into useful white light. Fluorescent lamps require a special power supply called a ballast that is needed to regulate the lamp's operating current and provide a compatible start-up voltage. Electronic ballasts must be used with all modern, high-efficiency and high-performance LFLs, especially those with small diameters like T8 or T5. (A

few specialized fluorescent lamp types in North America still use magnetic ballasts.) Electronic ballasts enable fluorescent lamps to operate consistently and efficiently, to incorporate dimming functions, and to be networked for advanced control of lighting.

THE TWO GENERAL TYPES OF FLUORESCENT LAMPS ARE:

- Compact fluorescent lamps
- Linear fluorescent lamps and Circline™ lamps

COMPACT FLUORESCENT LAMPS

CFLs come in a variety of sizes and shapes, including (a) twin-tube integral, (b and c) triple-tube integral, (d) integral model with casing that reduces glare, (e) modular circline and ballast, and (f) modular quad-tube and ballast varieties.

Compact fluorescent lamps (CFLs) work exactly like linear fluorescent lamps (LFLs), only on a smaller scale. They consist of two parts: a gas-filled tube and a power supply called a ballast that is either magnetic or electronic. The gas in the tube glows with ultraviolet light when electricity from the ballast flows through it. This, in turn, excites a specially engineered phosphor coating on the inside of the tube, which emits white, visible light throughout the surface of the tube.

Electronic ballasts, although sometimes more expensive than the old magnetic ballasts, generally turn on more quickly and reliably, especially at very low temperatures. They are also more efficient than the old magnetic ballasts and produce much less electromagnetic interference.

Most CFL lamps will last about 10,000 hours and the ballast about 50,000 hours or more. Most currently available CFLs have electronic ballasts integrated into their bases that are used in residential applications. Most CFLs used in commercial applications have the electronic ballast permanently located in the fixture so only the lamp requires replacement.....

TYPES OF COMPACT FLUORESCENT LAMPS

CFLs may have two, four, or six tubes or circular or spiral-shaped tubes. The size or total surface area of the tube(s) determines how much light is produced.

In some CFLs, the tubes and ballast are permanently connected. These are commonly called integral CFLs. Other CFLs have separate lamp tubes and ballasts. This allows the tubes to be changed without changing the ballast, and are generally used in commercial environments where the lamp will be illuminated for long periods. There are also examples of both types where the tubes are enclosed in a glass globe. These look somewhat similar to conventional incandescent light bulbs, except they are often larger in diameter and length.

Most integral CFLs fit into light fixtures or luminaires originally designed for incandescent lamps that use common Edison bases such as "medium" E-26 or "candelabra" E-12. Almost most CFLs fit into existing three-way E-26 lamp sockets.....

LINEAR FLUORESCENT AND CIRCLINE LAMPS

In LFLs, a very small amount of mercury mixes with inert gases to conduct electrical current. This allows the phosphor coating on the glass tube to emit white, visible light.

LFLs are usually identified as T12, T8, or T5 (with the suffix digit designating the diameter of the lamp tube in inches divided by 0.125 or one-eighth of an inch). They must be used in a dedicated fixture or luminaire that is supplied with a suitable ballast. These lamps may be straight, bent (U-tube), or circular (e.g., Circline™) in shape. The most common LFL is the 40-watt, 4-foot (1.2-meter) lamp, followed by the popular 75-watt, 8-foot (2.4-meter) lamps found in most commercial and industrial buildings.

LIGHTING COMPARISON CHART

Lighting Type	Efficacy (lumens/watt)	Lifetime (hours)	Color Rendition Index (CRI)	Color Temperature (K)	Indoors /Outdoors
Fluorescent					
Linear Fluorescent Lamp (LFLs) (Also known as "tube" or "straight tube" fluorescents.)	65-110 (For simplicity, the efficacy range excludes the losses asso- ciated with the ballast.)	7000-24,000	50-95 (fair to good)	2700-6500 (warm to cold)	Indoors/outdoors
Compact Fluorescent Lamps (CFLs)	33-70; for the most common A19 replacements, 65-70	10,000	77-88 (good)	2700-6500 (warm to cold)	Indoors/outdoors
Circline	40-50	12,000			Indoors
High-Intensity Discharge					
Mercury Vapor	25-60	16,000-24,000	50 (poor to fair)	3,200-7,000 (warm to cold)	Outdoors
Metal Halide	70-115	5,000-20,000	70 (fair)	3,700 (cold)	Indoors/outdoors
High-Pressure Sodium	50-140	16,000-24,000	25 (poor)	2,100 (warm)	Outdoors

Incandescent					
Standard "A-19" (Commonly called "light bulbs," "bulbs," or "A-19 bulbs.")	10-17	750-2,500	98-100 (excellent)	2,700-2,800 (warm)	Indoors/outdoors
Energy-Saving Incandescent (or Halogen)	12-22	1,000-4,000	98-100 (excellent)	2,900-3,200 (warm to neutral)	Indoors/outdoors
Reflector	12-19	2,000-3,000	98-100 (excellent)	2,800 (warm)	Indoors/outdoors
Light-Emitting Diodes					
Cool White LEDs	60-94	25,000-50,000	70-90 (fair to good)	5000 (cold)	Indoors/outdoors
Warm White LEDs	27-88	25,000-50,000	70-92 (fair to good)	3300 (neutral)	Indoors/outdoor

- **www.lrc** *[Lighting Research Center (LRC) at Rensselaer Polytechnic Institute is the world's leading center for lighting research and education. Established in 1988 by the New York State Energy Research and Development Authority]*

Fluorescent lamps are cylindrical glass tubes that are coated on the inside with phosphors. They contain a small amount of mercury and are filled with a small quantity of argon, a combination of argon and neon, or krypton gases. During operation, an electrical current passes through the lamp and the mercury is vaporized, producing ultraviolet light. The phosphor coating absorbs the ultraviolet light and re-radiates it as visible light.

Fluorescent lamps require ballasts to provide the starting voltage and limit the electrical current during lamp operation. There are two types of ballasts commonly available for residential lighting: the energy-efficient magnetic ballast and the electronic ballast. The majority of ballasts sold today are energy-efficient magnetic types. Electronic ballasts are attractive because they are more energy-efficient than magnetic ballasts. They offer the advantages of lighter weight, quieter operation, and reduction of flicker, but they cost more than magnetic ballasts....

Although fluorescent lamps all have tubular-shaped glass bulbs, the tubes can be bent into several shapes. The names for various shapes, and for shapes combined with ballasts and accessories, often are manufacturer-specific. This name variation can be confusing to consumers and specifiers. This book classifies compact fluorescent lamp shapes according to the 1992 National Electrical Manufacturers Association's system. Other names are adopted from the Illuminating Engineering Society of North America and the National Lighting Product Information Program.

A T12 or T8 tube bent in half is designated "U-shaped and a tube bent to form a circle is designated "circline." Long twin-tube lamps, which consist of two parallel small-diameter tubes, are designated as "FT" for "fluorescent twin." The FT lamps are longer than most compact fluorescent lamps. "CFT" for "compact fluorescent twin" designates a shorter lamp composed of two parallel tubes. "CFQ" for "compact fluorescent quad" designates a lamp composed of four tubes in a quad formation. "CFM" designates other compact fluorescent shapes including the recently introduced triple loops or triple U's.

Compact and circline fluorescent lamps with an attached ballast that has a medium screwbase are designated "screwbase." Screwbase compact fluorescent lamp products can have one or two pieces; one-piece units are called "self-ballasted and two-piece units are called "modular." Circline fluorescent lamp products are modular. When a self-ballasted screwbase lamp burns out, the ballast is discarded with the lamp; modular lamps allow replacement of just the lamp if the separate ballast is still operational. Some screwbase compact fluorescent lamps are made with glass or plastic globes, lenses, and reflectors that protect the lamp, may reduce glare, and may optimize the light distribution. These lamps are designated "screwbase compact fluorescent lamps with integral accessories."

All fluorescent lamps are nondirectional light sources, with the exception of compact fluorescent lamps with reflector accessories. These compact fluorescent reflector lamps are directional sources.

Luminaires: Except for those that use screwbase compact and circline fluorescent lamps, a luminaire using a fluorescent lamp must contain a ballast.

Controls: Most can be dimmed but at a higher cost than dimming incandescent lamps. Special dimming ballasts and dimming controls are required.

Designs: Fluorescent lamps commonly are used throughout a home.

Other Lamps: Incandescent, High-Intensity Discharge

Fluorescent: Linear

T12 T10 T8 T5)1 one inch 4

Linear fluorescent lamps are nondirectional light sources. The most common linear fluorescent lamps are 1½ inches in diameter and are designated as T12 for 12 eighths of an inch. Reduced-diameter fluorescent lamps, such as T10 (10 eighths or 1¼ inch diameter) lamps and T8 (8 eighths or 1-inch diameter) lamps with rare-earth phosphors, can provide improved system efficacy compared to conventional T12 lamps. Reduced-diameter lamps

have created new opportunities for efficient luminaire designs that are better suited for focusing the light output from a fluorescent lamp. T5 (5/8-inch diameter) lamps are available in lower wattages for small spaces such as coves, furniture-integrated luminaires, and under-cabinet luminaires.

- **What are T5 lamps?**

T5 lamps are fluorescent lamps that are 5/8" of an inch in diameter.....Differences in length and socket pin design versus conventional fluorescent lamps prevent any problems with electric circuits or human factors. **This section focuses on the physical characteristics of T5 systems compared with T8 systems.**

What does T5 mean?

The "T" in lamp nomenclature represents the shape of the lamp-tubular. The number following the "T" usually represents the diameter of the lamp in eighths of an inch (1 inch equals 2.5 centimeters). T5 lamps have a diameter equal to 5 times an eighth of an inch, or 5/8". These lamps are approximately 40% smaller than T8 lamps, which are one inch in diameter, and almost 60% smaller than T12 lamps, which are 1½" in diameter.....

- **www.lightingeurope.org**

Linear Fluorescent Lamps are high energy-efficient low-pressure discharge lamps with a fluorescent powder coating to transform the mercury UV radiation into visible light. **There are two main families of linear fluorescent lamps with tube diameters of: • T8 (26mm) and T5 (16mm) Also available are the following diameters: • T12 (38mm) • T10 (32mm) • T2 (7mm).**

- **University of Wyoming**

A fluorescent light bulb (also referred to as a "lamp") is a gas-discharge bulb that uses electricity to excite mercury vapor. The excited mercury atoms produce short-wave ultraviolet light that causes a phosphor to fluoresce, producing visible light. Mercury is an essential component of all fluorescent light bulbs, and allows these bulbs to be energy-efficient light sources.

Types of fluorescent bulbs

The most widely used types of fluorescent light bulbs in the United States are the linear fluorescent light and the compact fluorescent light (CFL).....

- **Bulbs.com**

Linear fluorescent lamps are functionally identical to compact fluorescent (CFL) lamps. Both are gas-discharge lamps that use electricity emitted from cathodes to excite mercury vapor contained within the glass envelope, using a process known as inelastic scattering. Phosphors and a noble gas such as argon are also contained within the glass envelope. The mercury atoms produce ultraviolet (UV) light, which in turn causes the phosphors in the lamp to fluoresce or glow, producing visible light. These lamps do rely on outside power source and regulation from a ballast.

- **Wikipedia**

A fluorescent lamp or a fluorescent tube is a low pressure mercury-vapor gas-discharge lamp that uses fluorescence to produce visible light. An electric current in the gas excites mercury vapor which produces short-wave ultraviolet light that then causes a phosphor coating on the inside of the bulb to glow. A fluorescent lamp converts electrical energy into useful light much more efficiently than incandescent lamps.....

Fluorescent lamp tubes are typically straight and range in length from about 100 millimeters (3.9 in) for miniature lamps, to 2.43 meters (8.0 ft) for high-output lamps. **Some lamps have the tube bent into a circle, used for table lamps or other places where a more compact light source is desired.** Larger U-shaped lamps are used to provide the same amount of light in a more compact area, and are used for special architectural purposes. Compact fluorescent lamps have several small-diameter tubes joined in a bundle of two, four, or six, or a small diameter tube coiled into a helix, to provide a high amount of light output in little volume.

Fluorescent lamps come in many shapes and sizes. **The compact fluorescent lamp (CFL) is becoming more popular.** Many compact fluorescent lamps integrate the auxiliary electronics into the base of the lamp, allowing them to fit into a regular light bulb socket.....

Fluorescent tubes are long, low-luminance sources compared with high pressure arc lamps, incandescent lamps and LEDs. However, low luminous intensity of the emitting surface is useful because it reduces glare. Lamp fixture design must control light from a long tube instead of a compact globe.

The compact fluorescent lamp (CFL) replaces regular incandescent bulbs. However, some CFLs will not fit some lamps, because the harp (heavy wire shade support bracket) is shaped for the narrow neck of an incandescent lamp, while CFLs tend to have a wide housing for their electronic ballast close to the lamp's base.

An overview of the above helps us see that the product presented for determination falls in the category of 'Linear fluorescent lamps". As has been seen above, fluorescent lamps are, mostly, of two types - linear and compact. The former comes in the straight tube form and the latter, as the name suggests, comes in a compact form, twisted or with bends. But both are distinctly known products. The distinction is very prominent as to say that when one wants a

CFL, he or she won't be handed over a 'straight tube' and the reverse is equally true. The following images would make my point very clear thus -



LINEAR FLUORESCENT TUBE



COMPACT FLUORESCENT BULB

I find that the website of the applicant, too, advertises the impugned product and a CFL under different categories. The products in the 'Lighting' category are shown under different heads as - 'LED bulbs', 'Energy-saving bulbs' and 'Fluorescent tubes'. The options available under 'Choose a bulb' when the 'Lighting' category of products is chosen, are - Bulb, Globe, Spiral, Stick, Linear and Specialty. The linear here is the straight tube form. The 'Lighting' category also has other options such as LED light bulbs, Compact fluorescent bulbs, fluorescent tubes, etc. To locate the exact product from the product range, various filters are provided such as PRODUCT TYPE and BULB TECHNOLOGY. Under PRODUCT TYPE, the options are Bulb, Spiral, Stick, Linear and Specialty and under BULB TECHNOLOGY, the three options are - LED, Compact Fluorescent and Fluorescent. The impugned product varieties can be obtained when the PRODUCT TYPE is selected as 'Linear' and the BULB TECHNOLOGY as 'Fluorescent'. It needs to be specifically mentioned that the impugned product varieties cannot be seen when the options 'Compact Fluorescent' (BULB TECHNOLOGY) and 'Linear' (PRODUCT TYPE) are selected.

My exercise to reproduce all above is to show that the impugned product in a straight tube form and a CFL, as understood by the schedule entry C-111, are not the same products. One is not the substitute for the other. We have many such examples in everyday life. A glass and a

bowl, both are made from stainless steel but both are distinct. It is not the case that only the shape is different. They are put to different uses. The utility changes with the shape and same is the case here, too. Both have distinct uses and are separate identifiable products. The alphabet 'T' in the name of the impugned product signifies a 'Tubular' form. The CFL consists of two parts: a gas-filled tube and a power supply called a ballast that is either magnetic or electronic. Whereas the Linear fluorescent lamp must be used in a dedicated fixture or luminaire that is supplied with a suitable ballast. The CFLs may have two, four, or six tubes or circular or spiral-shaped tubes whereas a T5 lamp comes as a single straight tube. Thus, there are differences even in the make, design of the two products.

I find that my observations about a T5 lamp/tube and a CFL are resonated in other States, too. I have come across clarifications under the Tamil Nadu and Kerala Value Added Tax Acts in the case of the very present applicant. Tvl. Philips Electronics India Limited had preferred an application under section 48-A of the Tamil Nadu Value Added Tax Act seeking clarification on the rate of tax on "T5 - CFL / CFT". By clarification dt.14.02.2013, T5 has been held as an unclassified item under the residuary entry of the said Act. While holding so, it was observed thus -

"Compact Fluorescent lamps and tubes are smaller both in length and diameter. The tube used in lighting applications are low pressure mercury vapour discharge lamps. These lamps generate light by the process of fluorescence by electrical discharge - passage of electricity to gaseous-vapour medium along the column of the tube. Therefore, T5 is not a Compact Fluorescent tube but, having the length of an ordinary tube light and hence irrespective of its specific characteristics, it is treated as a unclassified item."

Under the Kerala Value Added Tax Act, M/s. Philips Electronics India Ltd, Alupuram, Ernakulam had preferred an application under section 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax on the commodity Philips T5 Fluorescent Lamps. Similar contention about the said product being a CFL was made in the said proceedings, as well. In the decision dt.05.11.2012, it was observed thus -

"7. Entry No.28A in the Third Schedule to the Kerala Value Added Tax Act, 2003 does not carry an HSN Code, and hence common parlance or trade parlance test ought to be used in interpreting this entry. It is true that both Compact Fluorescent Lamps and T5 Fluorescent Lamps work under the fluorescent principle (i.e. low pressure gas discharge) and not on filament principle (tungsten filament lamps / incandescent lamps). But the differentiating factor is that in trade parlance T5 is a type of fluorescent lamp and is used in fixtures formerly used for incandescent lamps.

8. As such the commodity T5 fluorescent lamp, though energy saving, may not fit the description of a Compact Fluorescent Lamp and hence would not fall under Entry 28A of the Third Schedule to the Act. None of the entries in any of the Schedules to the Kerala Value Added Tax Act, 2003 is suitable for incorporating this commodity. Hence it is clarified that the commodity Philips T5 Fluorescent Lamps would be taxable at the rate of 13.5% by virtue of Entry 103 of S.R.O. No. 82/2006."

Thus, the rulings in other States were available before the applicant. Even the applicant is aware of the impugned product and a CFL being different and, hence, has, in so many words, in his present application before me requested to place the impugned product at par with the CFL as found mentioned in the schedule entry C-111 :

- *While granting of concessional VAT rate to CFL is a laudable step, however, FTLs such as T-8 and T-5 which are equally energy efficient and cost effective devices continue to be taxed at the higher VAT rate of 12.5%. A concessional VAT rate to T-8 and T-5 FTLs (similar to CFLs) in the State of Maharashtra will go a long way in*

helping the State achieve energy conservation and security.

- By way of this Representation, Philips India seeks to draw urgent attention of Finance Department, Government of Maharashtra ("Finance Department") to grant fiscal and tax incentives by way of reduction in VAT rate on the sale of T-8 and T-5 FTLs in the State at par with CFLs
- Further, it may not be out of place to mention that T-8 and T-5 FTLs are at par with energy efficient CFLs. While, they may consume slightly high electricity than CFLs, they definitely generate more illumination and are also cost effective. Hence, these FTLs stand on equal footing when compared to other energy efficient lamps like CFLs and thus deserve similar treatment (fiscal concession) as granted to CFLs in the State.
- Reduction in VAT rates of T-8 and T-5 FTLs will also be in conformity with the present approach of the GOM towards promotion of energy efficient lighting devices in the State, such as CFLs.
- It is therefore submitted that the Finance Department, GOM should consider reduction in VAT rates as levied under MVAT Act on the sale of T-8 and T-5 FTLs, at par with CFLs.

Even if the applicant had not expressly pleaded such as above, the position would not have been any different. A T5-Linear fluorescent lamp is not the same as a Compact Fluorescent Lamp. Although both the products fall in the fluorescent products category, the legislative intention to cover only CFLs can by no means be stretched to cover the impugned products. The word 'compact' in 'Compact Fluorescent Lamps' single-handedly conveys the product covered thereunder. Therefore, there arises no question of placing the impugned product under the schedule entry C-111 for 'Compact Fluorescent Lamps'. There is no specific entry for the impugned product. In view thereof, the same would be covered by the residuary schedule entry E-1 of the MVAT Act, 2002, thereby attracting tax @12.5%. The applicant is rightly selling the product-T5 energy saver lamps in the State of Maharashtra by levying VAT @ 12.5%. The tax discharge at a lower rate by other dealers is not a criterion for ascertaining the rate of tax on the impugned product. The rate of tax on any product is inferable only from the provisions or the schedule entries as are available under the statute. The information about incorrect tax compliance by other dealers would definitely be looked at but not in these proceedings.

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

ORDER

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

No.DDQ-11-2012/Adm-6/16/B- 3

Mumbai, dt. 27/10/2015

It is hereby determined that the product "T-5 Energy Saver Lamp" -

- is a Linear Fluorescent Tube and not a 'Compact Fluorescent Lamps' as understood by the schedule entry C-111 of the Maharashtra Value Added Tax Act, 2002.
- falls in the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby taxable @ 12.5%.


(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI