

Read : Application dt.24.01.2013(received dt.28.01.2013) by M/s. Rubicon Formulations Pvt. Ltd.
Heard : Sh. Janak Rajoria, Chartered Accountant.

PROCEEDINGS

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

No. DDQ 11/2013/Adm-6/8/ B- 1

Mumbai, dt. 21/10/2015

M/s. Rubicon Formulations Pvt. Ltd., having place of business at M-162 & 163, MIDC, Waluj, Aurangabad-413 136 and holder of TIN 27500333935V, request determination of the rate of tax on the product 'Clipper Lighter Gas' sold under invoice no.1264, dt.18.11.2014.

02. FACTS AND CONTENTION

The contents in the application are reproduced verbatim thus :

"Facts of the case :

The dealer is engaged in the business of filling of LPG in containers. These containers are used as packing material for filling of LPG which is used in many households to refill gas in lighters used for igniting gas stoves. The LPG filled in the containers cannot be used for any purpose other than refilling of lighters which is also mentioned on the product. Hence the primary purpose of this LPG containers is to enable cooking on gas stoves. The manufacturing process of these LPG containers involves filling of only LPG in empty aluminum/Tin containers. A flowchart of filling process is attached for your reference.

Filling Flowchart of LPG Containers

Cleaning	Decartoning and Cleaning of empty containers
	Checking of empty containers, placing them in plastic bins
Filling	Transfer the containers in filling area
	Place the valve on the containers
	Crimp (Seal) the valve with the required crimp parameters
	Set the LPG charging machine to deliver the required weight of LPG
	Now fill the LPG in the sealed container
	Perform the leak check to ensure packs are leak free
Packing	Fixing of Cap
	Box packing
Transfer the packed goods to Finished Goods Quarantine.	

Since the product under determination is LPG which is meant for domestic use whether it will be covered under entry No.58(b) of Schedule C of the Maharashtra Value Added Tax Act, 2002" Liquefied Petroleum Gas for domestic use".

Circumstances under which dispute has arise:

"Liquefied Petroleum Gas supplied in cylinders upto 14.5 Kg for domestic use" was a tax free commodity under entry no 21A of Schedule A of the Act. LPG not conforming to the above specification was taxable at 12.5%. However, w.e.f. 01st Apr, 2012 entry no 21A has been deleted vide Notification No VAT 1512/CR 40/Taxation-1 dated 31 March 2012. A new entry no 58(b) has been inserted in Schedule C wherein, LPG for domestic use has been made taxable @ 3%. This new entry has removed the condition regarding the manner and weight on supply of LPG for domestic use. The only condition mandated by new entry 58(b) in schedule C of the act is that the LPG must be supplied for domestic use. This is also amply clear from Trade Circular No 9T dt: 30th June, 2012 issued by the sales tax department.

Apart from LPG, these containers do not contain any other raw material and hence sale of this containers is purely a sale of LPG for domestic use. The dealer would like to bring to your notice that the word domestic use does not necessarily means a house only. The Karnataka High Court has explained the term domestic use in case of J.Vamana Prabhu vs. The State of Mysore (1967) 20 STC 38 (Mys). The honorable court explained that the word "domestic use" does not necessarily imports the idea of location or a place. The essence of the matter is the nature of the use to which the article is put and not the nature of the place where the same is used.

The dealer would like to bring to the notice that the Central Excise Tariff of India has classified the aforesaid product under the heading 2711 i.e. "Petroleum gas and other gaseous hydrocarbons". Hence the dealer seeks the clarification of the honorable Commissioner regarding the rate of Value added tax applicable on sale of Liquefied Petroleum Gas filled in containers meant for domestic use."

03. HEARING

The application was not accompanied by an invoice evidencing sale of the product put up for determination. The same was furnished later on. The matter was kept for hearing on dt.03.12.2014 when Sh. Janak Rajoria, Chartered Accountant attended the hearing. The product under determination was referred to as "Clipper Lighter Gas (100 ml)". It was submitted thus:

- The applicant purchases a container with a cap in which LPG is filled. There are 2 products (packing cases). The one of 100 ml is sold to G M Pens International Pvt. Ltd. (single dealer in Maharashtra State). This product of 100 ml is used in many households to refill gas in gas lighters for igniting gas stoves/burners. The LPG filled in the container cannot be used for any purpose other than refilling the lighters which is shown by way of a diagram on the product also. The container mentions "FOR DOMESTIC USE". The other product of 550 ml is for industrial use. The applicant seeks determination in respect of a container of the first product only.
- The schedule entry claimed applicable is C-58(b) - 'Liquefied Petroleum Gas for domestic use'.
- The applicant pleaded for grant of prospective effect to the determination order, if the contention is not accepted.
- The applicant wished to rely on the judgments of J. Vamana Prabhu Vs. The State of Mysore (S.T.A 263 of 1963-64 and S.T.R.P. No. 33 of 1966 decided on 24.02.1967) and D. Shivanna Versus State of Karnataka (120 STC 258 (Kar)).
- It is stated that the applicant is levying Excise on the LPG as the exemption under Excise is available only for supply of LPG by Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. and Bharat Petroleum Corporation Ltd.

In a re-hearing on dt.17.06.2015, Sh. Janak Rajoria, Chartered Accountant reiterated the submissions made earlier. During hearing, it was informed that a process is done to the LPG which absorbs the smell of the LPG. A written submission in this regard was promised to be submitted. Accordingly, the applicant through an e-mail dt.21st June 2015, mailed a Declaration by the applicant regarding LPG and a note on 'How the LPG is made Odourless' as under :

"Declaration

I hereby certify that the product under question i.e. 'Clipper' contains only Liquefied Petroleum Gas (LPG). Apart from LPG this product does not contain any other raw material or gases. The LPG filled in the aforesaid product is same LPG which is used in gas cylinders for cooking purpose.

How the LPG is made Odourless:-

Liquefied Petroleum Gas (LPG) is a combination of Propane, Butane and Iso Butane. The LPG has a particular odour which needs to be removed before filling it in the aluminum aerosol container. This is done with the help of specific chemical called as 'Molecular Sieves' which adsorbs the odouring component of LPG so that it becomes odourless. Before filling into the aerosol container, the LPG with odour is passed through the columns filled with Molecular Sieves which adsorbs the smelling component of LPG, resulting into odourless LPG. However, one may note that in this process only the odouring component of the LPG is removed, but the basic components of the LPG remains same as before.

A flow diagram for removing the odour from LPG is attached herewith for your reference.

1. Storage tank where purchased LPG is stored.
2. Columns filled with molecular sieves.
3. LPG filling machine where LPG is filled in aluminum container."

04. OBSERVATIONS

I have gone through the facts of the case. The product before me is a can which is stated to contain Liquefied Petroleum Gas (LPG) to be used to refill gas in gas lighters for igniting gas stoves/burners. The invoice evidencing sale of the product mentions the product as "Clipper Lighter Gas 100ml()". While describing the product as "High Quality Universal Lighter Gas", the

contents on the can are mentioned as - **Key Ingredients: Propane, Butane, Iso Butane**. It is claimed that the impugned product would be covered by the schedule entry C-58(b) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002) which reads thus - "**Liquefied Petroleum Gas for domestic use**". We see that the entry is for LPG. However, LPG for all purposes is not covered by the entry. The entry is very specific and seeks to cover LPG which is for "DOMESTIC USE" only. Thus, the words 'LPG' and 'DOMESTIC USE' are to be read in conjunction. The 'domestic use' of LPG is normally for use as a cooking fuel in households. The word 'domestic' has been referred in the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 dt. 26th April 2000 which is promulgated in exercise of powers conferred by section-3 of the Essential Commodities Act, 1955. The Order distinguishes the cylinders between domestic and non-domestic as per the capacity of the cylinders carrying the LPG. Further the LPG is to be distributed under the public distribution system through the authorized distributors. Certain provisions under the aforesaid Order may be seen thus :

Restriction on storage and transport of liquefied petroleum gas -

(1) No person shall - (a) fill any cylinder with liquefied petroleum gas or transfer liquefied petroleum gas from one cylinder to another cylinder or from one container to another container unless authorised by the Chief Controller of Explosives;

Restriction on sale or distribution of liquefied petroleum gas below or in excess of the standard weight. -

No Government Oil Company, distributor or parallel marketeer shall supply, sell or distribute to a consumer liquefied petroleum gas in cylinders which contains less than or in excess of the weight of liquefied petroleum gas specified in the Schedules II and III or as indicated on the cylinder.

Prohibition on carrying unauthorised business of selling LPG -

No person other than a Government Oil Company, a parallel marketeer or a distributor shall be engaged in the business of selling liquefied petroleum gas to the consumer.

Possession, supply or sale of liquefied petroleum gas equipments. -

(1) No person shall - (a) supply or sell filled or empty cylinder, gas cylinder valve and pressure regulator to any person other than a Government Oil Company or a parallel marketeer; (b) unless authorised by a Government Oil company or a parallel marketeer, supply or sell filled or empty cylinder, gas cylinder valve and pressure regulator to any person other than a consumer; (c) possess filled or empty cylinder, gas cylinder valve or pressure regulator, unless he is a distributor or a consumer. (2) Every manufacturer of cylinder, gas cylinder valve and pressure regulator shall destroy by crushing those cylinders, cylinder valves and pressure regulators which do not conform to the Indian Standards.

Display of stock and price of liquefied petroleum gas. -

Every distributor shall prominently display the stock and price of the liquefied petroleum gas at a conspicuous place of the business premises including the storage point, showing- (i) the opening balance of filled, empty and defective cylinders and regulators; (ii) the back log of preceding working day of the filled cylinders to be supplied;

SCHEDULE -I - Prohibited Activities (for Government Oil Companies)

5. Unauthorised diversion of domestic cylinder for non-domestic use of LPG.

It can be seen from the above that the word 'domestic' with regard to LPG has a defined magnitude. What I mean to say is that the word 'domestic' is no alien a word and has to be understood in the context of the product. LPG, be it for domestic or commercial / non-domestic use, comes in cylinders. Nowadays, it also comes through a dedicated pipeline. A report about census of the States in the Union of India concerning with 'Cooking fuels' identifies ten categories of households classified by the type of fuel used. The fuel types are firewood, crop residue, cowdung cake, coal/ lignite/charcoal, kerosene, LPG/PNG, electricity, biogas, any other cooking fuels. Thus, LPG is one amongst the different types of fuels in use in the domestic



sector. The entry under the MVAT Act, 2002 seeks to bring in the lower tax bracket LPG which is for domestic use. Whereas the product before me is a can used to refill the gas lighters. It is not a gas lighter but a can which is used to refill a gas lighter. It would not require much wisdom to infer that the entry, but certainly, is not for such type of a product. A lighter is used to ignite the stove and the present product is a refill can used to refill the lighter. Merely because the product contains LPG would not make the product as being 'LPG for domestic use'. Going by the analogy as sought to put forth by the applicant then the applicant would call even the gas lighter containing LPG as a product being covered by the words 'LPG for domestic use'. Further, this logic could be extended even to the hose or the rubber tube carrying the gas to the stove. Hence, the product and its use has to be understood. The entry is for 'LPG'. Obviously, it is going to have some carrying medium. But not every product containing LPG could be covered under 'LPG for domestic use'. The present product would not be the 'LPG for domestic use'. It cannot be put to use directly as LPG. One has to follow the instructions on the refill can to make use of it:

INSTRUCTIONS FOR REFILL:

1. Hold refill can vertically upside down, press the nozzle downward firmly into the lighter valve for 5 to 10 seconds as demonstrated in the illustration. 2. Do not activate the lighter when filling. 3. Wait 1 minute before using it. 4. Always ignite lighter away from face

Thus, the contents of the can are to be filled into the lighter. This lighter would then be used to ignite the stove or the cooking range which may be adapted to run either on LPG or Piped Natural Gas i.e any fuel used in households. Thus, the product is being sold as a refill can and not as LPG *per se*. As mentioned above, the entry being for LPG, the same would cover LPG and not an accessory (*the refill can*) of a product designed to work on LPG (*the gas lighter*). As mentioned above, the LPG for domestic use is the one which comes in the households or non-commercial establishments through a cylinder or a pipe line. Though the entry does not specify the means of carriage of LPG, there are no other means at present by which LPG could be made available for domestic use other than through cylinders or pipes. The applicant has argued that the entry has no condition regarding the manner and weight of supply of LPG for domestic use. I agree that the entry for LPG for domestic use has been subjected to amendments thus -

Schedule A - Entry 21A	L. P. G. supplied in cylinders containing upto 14.5 kg. of L.P.G., for domestic use.	Nil %	7.6.2008 to 31.3.2012
	Deleted		Deleted w.e.f. 1.4.2012
Schedule C - Entry 58(b)	LPG for domestic use sold on or after 18th April 2006.	4%	18.4.2006 to 6.6.2008
	Deleted		Deleted w.e.f. 7.6.2008
	Liquefied Petroleum Gas for domestic use.	3%	1.4.2012 to date

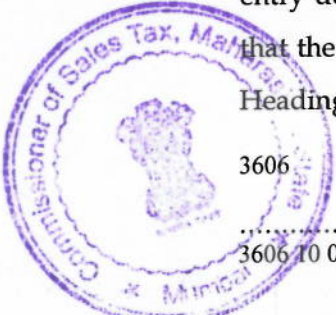
It can be seen that earlier the mode of supply of LPG was restricted to the one through cylinders of a certain weight only. The entry in Schedule 'C' has done away with the mode of supply. It now only remains 'LPG for domestic use'. However, the doing away with the mode of supply would not mean that a refill can for a gas lighter could get placed under the description 'LPG for domestic use'. The LPG in the refill can cannot be put to use unless its contents are

transferred to the lighter. The refilled lighter would then be used to ignite the cooking media. Surely, the entry doesn't envisage products as in a lighter, its refill cans and such type of products to be falling thereunder. Merely because the product contains LPG and there's a mention on the can of the words 'FOR DOMESTIC USE' would not place the impugned product in the schedule entry C-58(b). The impugned product falls in the category of products employing the LPG for various uses but these are not LPG per se. Further, we also see that there is no regulated distribution mechanism for the sale of this product. These products have separate identity as gas lighters or as refill cans for gas lighters. These would certainly not be the product 'LPG for domestic use' as understood by the entry C-58(b).

The applicant has sought to place reliance on certain judgments in relation to the word 'domestic'. However, I find that the impugned case laws would not be applicable here as we have seen that the impugned product is a refill can with a separate identity and not the 'LPG for domestic use' as mentioned in the schedule entry which uses the word 'domestic'. The said schedule entry not being applicable to the applicant's product, I refrain from discussing the case laws herein.

In view of all the discussion as at above, I have to observe that the claim as regards the impugned product being covered by the schedule entry C-58(b) is not found proper.

05. Having seen as above, I would like to touch certain other aspects, too. The impugned entry does not refer to classification under other statutes. However, I would just mention here that the sale invoice shows the impugned product being cleared under the Central Excise Tariff Heading 3606 10 00 which reads thus :



3606	Ferro-cerium and other pyrophoric alloys in all forms; articles of combustible materials as specified in Note 2 to this Chapter
3606 10 00	Liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters and of a capacity not exceeding 300 cm ³

It would also be useful to reproduce herein the Note 2 as referred to in the Heading 3606 above.

"2. The expression "articles of combustible materials" in heading 3606 applies only to :

- metaldehyde, hexamethylenetetramine and similar substances, put up in forms (for example, tablets, sticks or similar forms) for use as fuels; fuels with a basis of alcohol, and similar prepared fuels, in solid or semi-solid form;
- liquid or liquefied-gas-fuels in containers of a kind used for filling or refilling cigarette or similar lighters and of a capacity not exceeding 300 cm³; and
- resin torches, firelighters and the like."

Thus, it can be seen that the Chapter 3603 covers containers used for refilling of lighters. Whereas petroleum gases fall in the Chapter 27 (*LPG cylinders of iron and steel fall in Chapter 73*).

There is yet another point. It was pointed during hearing that to avoid the peculiar odour of LPG, certain process is undergone before filling the LPG in the refill cans. Whereas the data

available on the Net shows that at the time of production of LPG, mercaptan (a chemical compound - Ethanethiol, commonly known as ethyl mercaptan) is added to it so as to give the familiar foul smell for easy detection of gas in the air. Even very small quantities of gas can be detected by this smell. Thus, one aspect is seen such that the LPG received through cylinders or through pipe line would be different from the one in the impugned refill can on the counts of odour. The website of World LPG Association states that *LPG has two origins: approximately 60% is recovered during the extraction of natural gas and oil from the earth, and the remaining 40% is produced during the refining of crude oil.* The main composition of LPG are hydrocarbons containing three or four carbon atoms. The normal components of LPG thus, are propane (C_3H_8) and butane (C_4H_{10}). Small concentrations of other hydrocarbons may also be present. Depending on the source of the LPG and how it has been produced, components other than hydrocarbons may also be present. The Wikipedia explains that *the Liquefied petroleum gas or liquid petroleum gas (LPG or LP gas), also referred to as simply propane or butane, are flammable mixtures of hydrocarbon gases used as fuel in heating appliances, cooking equipment, and vehicles. Varieties of LPG bought and sold include mixes that are primarily propane (C_3H_8), primarily butane (C_4H_{10}) and, most commonly, mixes including both propane and butane.* The present product has an ingredient Isobutane which is a colorless gas with a faint petroleum-like odor and is used as a propellant for aerosol cans. Thus, composition wise too, the impugned product is different.

06. As discussed above and as needs to be stressed again, the impugned product is a refill can and is not the 'LPG for domestic use' as sought to be covered by the schedule entry C-58(b). There is no specific schedule entry which covers the impugned product. Therefore, it gets placed in the residuary schedule entry E-1 of the MVAT Act, 2002. In view of the facts and discussion above, it is determined thus -

ORDER

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

No. DDQ 11/2013/Adm-6/8/ B- 1

Mumbai, dt. 21/10/2015

It is herewith determined that -

- i. The product 'Clipper Lighter Gas' is not covered by the schedule entry C-58(b) of the Maharashtra Value Added Tax Act, 2002.
- ii. In absence of a specific schedule entry, the product gets placed in the residuary schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002, thereby liable to tax @12.5%.


(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI