

Read : Application dt.15.07.2014 by M/s.Anant Engineering Products.

Heard : Shri P.B.Sukhatme, Sales Tax Practitioner.

## PROCEEDINGS

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

No.DDQ-11/2014/Adm-6/17/B- 1

Mumbai, dt. 10/8/2015

M/s.Anant Engineering Products, (the applicant) having address, as mentioned on invoice, as 235/B-2, Paresh Apts, Parvati, B/h Bank of Maha, Pune-411009 and registered under TIN 27811061410V under the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002) request determination of the rate of tax on the product "Fumigation Machine/ Air Sterilizer 6224" (FogKing Machine) sold under invoice no.7 dt.13.12.2014.

### 02. FACTS OF THE CASE

The applicant informs about being a dealer of Foggers/Fumigation Machines and Wall Mounted Air Purifier which are used in Operation Theatres in hospitals. The brochure of the product "FogKing Fogging Machine" (Ultra fine aerosol generator or Fumigation/environment Sterilizer) describes the product thus :

"FogKing is a liquid ULV fogger suited to the application of spraying water & oil based liquids in fine particle form for disinfection, pest, odor control applications. FogKing is a portable model, made out of Aluminium, SS and Plastic to make it non-corrosive. The tank capacity varies from 4 to 7.5 lts.

#### Salient Features

1. Less power consumption and more area coverage
2. All material used is non corrosive.
3. The liquid is broken into fine particles at the nozzle itself therefore the motor does not come in contact with the liquid reducing the burning problem of the motor.
4. Air filter at the end does not allow clogging of the machine.
5. The head is adjustable and can be swung with the help of an additional rotating assembly.
6. "Liquid flow control valve" helps in adjusting the particle size easily.
7. Single machine can be used at various locations.

#### Technical Specifications

Design : Portable

Particale Size : 1 -40+ Microns

Tank Cap.,: 7.5 lts

Liquid flow rate: 1-5 lts/hr

Partial t: Visible 15-20 feet

Area Coverage : 10000= cubic ft.

Timer Device : 5 to 60 min

Motor Speed : 20000 rpm

Power : 230 VAC 50/60 Hz.

Weight: 5-6 kgs

Motor CFM : 105 Cubic ft/ min

#### Application Area

Hospitals, Nursing Home & Clinics

Fumigation of OT, ICUs, ICCUs, Neonatal ICUs, AKD Units, Patient Rooms, General ward, Post operative wards, Air Sterility in Microbiological Labs, Pathology labs, Blood Banks

Pharmaceutical & Biotech Industries

Air fumigation/environment sterility in areas of injection, vaccines IV fluids& bulk drug manufacturing center. R&D center, Clinical Drug trial center, Tissue Culture Labs."

The details as mentioned on the sale invoice are :

Product Code	Product Detail
1018 SFE	Fumigation Machine/ Air Sterilizer 6224  FogKing is a liquid ULV fogger Tank Capacity: 6.5 Ltrs. (SS 316L) Flow Control: 1 to 5 or 18 Ltrs./Hr. (Adj) Electronic Timer: 5 ~ 60 mins. Engg Plastic NOzzel

The applicant has given a purchase bill evidencing product which contains details thus :

Description of Goods	Tariff / HSN Classification
ULV Fogger 1018 (SFE) 6.5 Ltrs SS316L Tank, Plastic Body, Flowcon & Timer	8424.8990

The applicant is of the opinion that these goods are Medical devices and implants as covered under schedule entry C-107(8) and therefore taxable @ 5%.

### 03. HEARING

The matter was fixed for hearing on 29<sup>th</sup> July 2015 when Shri P.B.Sukhatme, Sales Tax Practitioner attended. The proceedings during hearing are thus -

- The product is a fogging machine used in hospitals, nursing homes, clinics for sterilization purposes. Hence, it is claimed as being a medical device. It is not supplied to any other client except hospitals.
- Since, it is claimed that the product is covered by the entry C-107(8), the attention of the applicant was invited to the fact that the entry speaks of a notification which is based on classification under Central Excise Tariff headings.
- It was submitted by the applicant that the product is cleared by other manufacturers in other States under Central Excise Tariff Heading (CETH) 84248990. The applicant is a reseller/dealer/trader and is not eligible to get registered under Excise. In view of the CETH being pointed out to be 84248990, the attention of the applicant is invited to the fact that the notification under the schedule entry does not cover the aforesaid CETH. To this, it was submitted that the request to consider notifying the product as a medical device be considered so that tax @ 5% is attracted on this product.

### 04. OBSERVATIONS

  
I have gone through the facts of the case. The product placed for determination is a "Fumigation Machine/Air Sterilizer 6224" (FogKing Machine). It is contended that the impugned product is a medical device under schedule entry C-107(8) of the MVAT Act,2002. The schedule entry reads thus -

*Medical devices and implants as may be notified from time to time by the State Government in the Official Gazette;*

As can be seen, not all medical devices find a place under the aforesaid schedule entry. Only those medical devices as are notified would be covered by the entry. The entry speaks of a notification and this notification is based on the classification under the Central Excise Tariff. The description against any CETH may or may not be taken in its entirety for the purposes of the notification. Therefore, it may be the case that only selected products as falling under any CETH, as are intended by the legislature to be covered under the schedule entry may be

notified. The rules for interpretation are provided in the notification. Coming back to the present case, the applicant informs that the impugned product falls under the CETH 84248990. However, as pointed to the applicant during hearing, the aforesaid CETH has not been notified for the purposes of the schedule entry C-107(8). Products of the description as the impugned product do not find a mention in the notification for the purposes of the aforesaid schedule entry C-107(8). There arises no need to enter into any debate as to the impugned product being falling under the CETH 84248990 or otherwise. And further still, in view of the CETH 84248990 not being notified for the purposes of the aforesaid schedule entry, I need not even enter into any exercise of ascertaining whether the impugned product could be classified as a 'medical device', in the first place, for the purposes of the aforesaid entry. Now, it is also seen that there is no specific schedule entry for the impugned product under the MVAT Act,2002. In view thereof, the impugned product finds placed in the residuary schedule entry, thereby liable to tax @12.5%.

As regards the request of the applicant to classify the impugned product as a medical device, I have to state that the present proceedings restrict the scope of the present determination order only to determining of the rate of tax on any product in terms of the provisions as are available under the MVAT Act,2002 during the invoice period under consideration. Though the Schedule under the MVAT Act,2002 provides for an entry for 'medical devices', as mentioned above, not all medical devices are covered by the entry. Only those devices as are notified find a place in the said entry. In the present case, we have seen that the impugned product has not been notified. In view thereof, the request to consider the impugned product as a 'medical device' cannot be accepted.

In the circumstances, it is determined thus -

**ORDER**

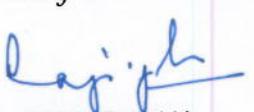
(under section-56(1)(e) of the Maharashtra Value added Tax Act, 2002)

No.DDQ-11/2014/Adm-6/17/B- 1

Mumbai, dt. 10/08/2015

For reasons as discussed in the body of the order, it is herewith determined that -

- i. "Fumigation Machine/Air Sterilizer 6224" (FogKing Machine) sold under invoice no.7 dt.13.12.2014 has not been notified under the notification for the purposes of the schedule entry C-107(8) of the Maharashtra Value Added Tax Act, 2002.
- ii. the impugned product falls in the residuary schedule entry, thereby liable to tax @ 12.5%.

  
(RAJIV JALOTA)

**COMMISSIONER OF SALES TAX,  
MAHARASHTRA STATE, MUMBAI**