Read : Application dt.08.03.2013 by M/s. Supreme Fibre Glass Pvt. Ltd., holder of TIN 27810017690V.

Heard : Smt. Nikita Badheka (Advocate), Sh. Vinit Dhuvad (STP), Smt. Niki Shah (CA) and Sh. Ritesh Doshi (Director) attended the hearings on dates dt.14.11.2014 and dt.13.04.2015.

PROCEEDINGS

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

No. DDQ 11/2013/Adm-6/17/ B- 2 **Mumbai, dt.** 20/07/2015

An application is received from M/s. Supreme Fibre Glass Pvt. Ltd., situated at Gala No.15, Bldg. No.1, Gr. Flr, Sr.No.239, Shivalay Indl. Estate-II, Waliv Marg, Behind N.J. Indl. Est, Gokhiware, Chinchpada, Vasai (E), Dist. Thane 401 208, seeking determination of the rate of tax on the product 'Wind Operated Turbo Ventilator' and its spare parts.

02. FACTS OF THE CASE

The contention as made out in the application is reproduced verbatim thus -

"We are manufacturers of Renewable Energy products. One of our product is Turbine Ventilator, sold under the Brand name of Supreme Fibre. As can be seen from the technical details the turbine ventilator rotates at the minimum wind velocity of 5 miles per hr. Max wind velocity gives it the large Rotations per Minute (RPM). The intensity of the wind is directly proportional RPM and subsequently to the exhaust capacity generated because of the wind. In short the entire turbine ventilator works on wind energy except for the fact that it does not have any alternate arrangement for utilizing alternate energy. Like electricity etc. The turbine ventilator rotates continuously non stop. The Turbine Ventilators are used as Exhaust fans by the Factories.

We have been charging 12.5% on the above product. However came to know that the similar product in the market are being sold at the rate of 5% as covered by Sch Entry C-82 of the MVAT Act. We are enclosing herewith our specimen invoice as also the specimen invoice obtained by us from the market for the similar product, where the VAT is being charged at 5%.

The difference in rate of tax affected our competitiveness. On taking legal advice, we are informed that the correct rate of tax should be 5% only as our product is covered by the Notification regarding renewable energy devices. Serial 12 of the said Notification dated 1st April 2005, refer to "any special devices including electric generators and pumps running on wind energy". We are therefore convinced that the correct rate of tax should be 5% only. However, to avoid any litigation in future date, we wish to have the confirmation about the correct rate of tax from your honour.

Since we are dealing with these goods in our day to day business, we request to confirm and give the opinion at the earliest. Guided by the Legal advice we have already started charging 5% VAT on these products w.e.f. 1.4.2012 which please note."

The brochure describing the technical details, as referred to above, about the 'Turbine Ventilator' states thus -

"Introduction :
Ventilation is simply the process of supplying a continuous flow of fresh air through a space. This is often accomplished by a system of intake and exhaust ventilators.
How does it works :
The supreme Turbine ventilator is a combination of both natural & forced ventilation system. It functions as a natural ventilators when there is a difference in thermal or wind pressure between the inside and outside of the building which forces the air to move through the opening of the ventilators. It also acts a forced ventilation system when the turbine rotates to create a negative pressure within the factories. Cooler air from the outside will rush into the negative pressure space within the factories in order to maintain an equilibrium condition.

Features :
Rigid roll formed curved vanes.
Weatherproof and storm proof.
Rotor shaft & bearing assembly concealed in aluminum or stainless steel casing.
Easily field replaced.
Virtually maintenance free.
Light weight & durable.
Available in Aluminium and stainless steel.
Advantages :

1) *Safe as it does not require electricity. No pollution as it uses natural air.*
2) *Easy to install on any type of roof.*
3) *Light weight, made from aluminium & base plate is of FRP.*
4) *Virtually maintenance free.*
5) *No noise as using supreme bush.*
6) *Rainproof as supreme turbine ventilator is designed to protect from rain.*
7) *Helps remove stale, damp & hot air-increases workers productivity.*
8) *Saves the energy - Supreme turbine ventilator operates utilising the slight energy of the wind, so it saves power cost. Even building that air-condition is installed, the hot air which accumulates above ceiling will be removed. However, the air condition can work at its lesser power consumption.*
9) *Prolongs life of machines - Supreme turbine ventilators can extract dampness in the air out of the building, which results in machine and other electrical system can work at their fullest efficiency & prolongs their life.*
10) *100% depreciation.*

The Benefits of natural ventilation system:
Factories, Warehouses, Workshops & even community building frequently constructed without an efficient natural ventilation system for the benefit of occupants. And, if the interior of the building gets hot and stale, there's always door of windows that can be opened to provide for the ventilation.
However, stale & hot air doesn't disappear by itself & opening doors or windows is simply not sufficient to provide adequate ventilation in most buildings. But, by installing Supreme Turbine Ventilators, you can provide an efficient & cost effective system of natural ventilation for the benefit of the buildings occupants.
These wind driven ventilators, unlike doors or window, draw air upwards, creating a convection current, & in the process they extract stale air, together with air which has become hot due to the buildings exposure to long hours of sunlight & from manufacturing processes within the building.
As the stale & hot is extracted by the ventilators, it is replaced by fresh air at ambient temperature entering through doorways & opening thus completing the convection cycle current & improving the internal environment. Needless to say, fresh air makes people more energetic whilst stale air causes people to feel tired & on hot days the air movement over the -body causes evaporation to occur which is the natural way of cooling down and reducing heat stress on the body."

Commissioner of Sales Tax, Maharashtra State Mumbai

03. **HEARING**

The case was taken up for hearing on dt.14.11.2014 when Smt. Nikita Badheka (Advocate), Sh. Vinit Dhuvad (STP), Smt. Niki Shah (CA) and Sh. Ritesh Doshi (Director) attended the hearing. The working of the 'Turbo Ventilator' was explained thus:-

1. The product works solely on natural air.
2. There is no alternative arrangement for working on electricity, battery or other source of energy/power.
3. The product comes in a set as in the Turbo ventilator and the base plate which holds the ventilator.
4. The functioning of the product – once installed, it runs on the natural air as well as the pressure of hot air within the unit in which it is installed.
5. The product is normally used in factories. It can be big or small depending on the requirement and space availability.

The applicant has submitted certificates from the customers certifying therein that the product operates entirely on wind. Also, a copy of an Advance Ruling under the Karnataka Value Added Tax Act, wherein a similar product is held as covered by the entry for 'renewable energy device' is given. The claim of the schedule entry for MVAT Act, 2002 is C-82 which reads as 'Renewable energy devices as may be notified and spare parts thereof'. In terms of the notification, the product falls in the description at sr. no.12 which reads '*Any special devices including electric generators and pumps running on wind energy*'. Therefore it is argued that the product is a special device running on wind energy. By way of abundant caution a request for prospective effect is made.

A re-hearing in the matter was held on dt.13.04.2015 when it was submitted thus -

1. The turbine ventilator rotates at the minimum wind velocity of 5 miles per hr. and is also used as an exhaust fan by the Factories.
2. It is a special device designed to run on wind energy. The design and the material are specific which confirms that but for specific design and material, it would not have functioned on wind.
3. About the Karnataka Advance Ruling, it is pointed out by referring to the website of the dealer in the said Advance Ruling that the product therein is identical to the applicant's product.
4. The applicant also sells spare parts/components which is described as being a base plate made up either of FRP or aluminium or poly carbonate, etc. for support and effective functioning of the Turbo ventilator. The product is normally sold as a set i.e the Turbine ventilator and the base plate. Sometimes it is also sold separately i.e the Turbine ventilator or only the base plate i.e the roof curb. It is contended that being a part of the Turbine ventilator, it would be covered by the entry C-82 and therefore, would attract tax @5%.
5. All other submissions are reiterated.

Commissioner of Sales Tax, Maharashtra State Mumbai

03. OBSERVATIONS

I have gone through the facts of the case. The product is a 'turbine ventilator'. The applicant informs that it is also referred to as an exhaust fan. The product does not use electric energy nor is it run on the energy which has been produced by some other product using the wind energy. It is not one of the types that are used to produce renewable energy instead it is one which uses the wind directly. And the applicant lays great stress to assert that the product operates by using the wind energy directly. I have referred to the information given by the applicant as also the various sources as seen on the Web. A paper on 'Rooftop Turbine Ventilator: A Review and Update' by Mazran Ismail & Abdul Malek Abdul Rahman (School of Housing, Building & Planning, Universiti Sains Malaysia, Penang, Malaysia) puts it thus - '*As an alternative to air-conditioning systems, the rooftop turbine ventilator now is not only widely accepted as industrial ventilation, but also has become a common ventilation feature used in other types of buildings including institutional, commercial and residential. Although it is often thought to be very effective even in the lightest wind conditions, but many scientific studies found that its actual performance in the real building is not very promising due to some outdoor climatic constraints and the*

weaknesses of the device's configuration itself'. Therefore, the paper discusses about the turbine ventilator's characteristics, reliability, limitations and possible improvement to the device. A portion therein could be referred to -

"Due to the simple operating mechanism and relatively affordable price, a turbine ventilator which is driven by natural wind force is always a preferred choice to ventilate the building *without depending on air conditioning system which is usually associated with global warming, finite fossil energy depletion and sick building syndrome (SBS) (Seppanen & Fisk, 2002; Liping & Hien, 2007). This device, which is also known as a rotary ventilator is a wind-driven air extractor which was originally patented by Meadows since 1929. It is considered as one type of roof ventilator which has been defined by American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) (1999) as* ***'a heat escape port located high in a building and properly enclosed for weather tightness with the primary motive forces being stack effect and wind induction'****. Due to these characteristics, the rooftop turbine ventilator can be categorized as both active and passive ventilation strategy. Dominantly, turbine ventilator is classified as an active ventilation strategy although it does not use any electricity to rotate. This is due to the fact that the constantly moving spinning blades driven by outdoor wind force is found to be the major factor that creates centrifugal forces in the turbine, which in turn extract hot air from the building (Khan et al., 2008). On the other hand, the turbine ventilator could also be considered as a passive ventilation strategy, especially in the absence of wind. This is due to the existence of net free vent area i.e. openings between vertical blades which can induce stack effect and extract hot and stale air out from the building if there is sufficient indoor-outdoor temperature differential (Rudd & Lstiburek, 1998). Because of these rationales, the turbine ventilator can be classified as wind-assisted stack ventilation or wind-stack driven ventilation strategy as termed by Allard (1998) since it can maximize both wind-induced and stack effect to extract hot and stale air from the building. In general, the device composes a waterproof frame which is mounted by a number of vertical vanes in a spherical or cylindrical array and a base duct which is connected by a shaft and bearings."*

Thus, as the name suggests, the impugned product is basically a ventilator and it runs on the wind which is naturally available. The entry which is claimed applicable is entry 82 in Schedule C of the MVAT Act,2002 and it reads thus -

Renewable energy devices as may be notified from time to time by the State Government in the Official Gazette and spare parts thereof.

As can be seen, the words used are '*Renewable energy devices*' and the entry calls for a notification. Thus not all '*Renewable energy devices*' but only the ones which have been notified would fall under the entry. The description in the clause of the notification under which it is claimed that the impugned product falls reads thus :

'Any special devices including electric generators and pumps running on wind energy'

In view of above, it is the contention that the impugned product is a special device running on wind energy. It's not disputed that the impugned product falls in the category of wind-driven devices that do not produce electricity. The product is not one producing renewable energy but is one using the wind directly, thereby saving electricity usage. And therefore, the contention is that the impugned product is a renewable energy device. Energy conservation is a national policy and we are aware that various sops are offered to initiatives contributing to the cause. Therefore, I need to understand from the approach or the policy of the Government or the concerned agencies as to whether renewable energy devices would include such devices.

In a document of the Bureau of Energy Efficiency on 'Application of non-conventional & renewable energy sources', the Concept of Renewable Energy is explained thus -

"Renewable energy sources also called non-conventional energy, are sources that are continuously replenished by natural processes. For example, solar energy, wind energy, bio-energy - bio-fuels grown sustain ably), hydropower etc., are some of the examples of renewable energy sources ***A renewable energy system converts the energy found in sunlight, wind, falling-water, seawaves, geothermal heat, or biomass into a form, we can use such as heat or electricity.*** *Most of the renewable energy comes either directly or indirectly from sun and wind and can never be exhausted, and therefore they are called renewable. However, most of the world's energy sources are derived from conventional sources-fossil fuels such as coal, oil, and natural gases. These fuels are often termed non-renewable energy sources. Although, the available quantity of these fuels are extremely large, they are nevertheless finite and so will in principle 'run out' at some time in the future Renewable energy sources are essentially flows of energy, whereas the fossil and nuclear fuels are, in essence, stocks of energy.*

Various forms of renewable energy

Solar energy
Wind energy
Bio energy
Hydro energy
Geothermal energy
Wave and tidal energy

This chapter focuses on application potential of commercially viable renewable energy sources such as solar, wind, bio and hydro energy in India.

.....

12.3 Wind Energy

Wind energy is basically harnessing of wind power to produce electricity. The kinetic energy of the wind is converted to electrical energy. *When solar radiation enters the earth's atmosphere, different regions of the atmosphere are heated to different degrees because of earth curvature. This heating is higher at the equator and lowest at the poles.* ***Since air tends to flow from warmer to cooler regions, this causes what we call winds, and it is these airflows that are harnessed in windmills and wind turbines to produce power.***

Wind power is not a new development as this power, in the form of traditional windmills -for grinding corn, pumping water, sailing ships - have been used for centuries. Now wind power is harnessed to generate electricity in a larger scale with better technology.

Wind Energy Technology

The basic wind energy conversion device is the wind turbine. Although various designs and configurations exist, these turbines are generally grouped into two types:

1. Vertical-axis wind turbines, in which the axis of rotation is vertical with respect to the ground (and roughly perpendicular to the wind stream),

2. Horizontal-axis turbines, in which the axis of rotation is horizontal with respect to the ground (and roughly parallel to the wind stream.)

.....

Wind Energy in India

India has been rated as one of the most promising countries for wind power development, with an estimated potential of 20,000 MW. Total installed capacity of wind electric generators in the world as on Sept. 2001 is 23270 MW. Germany 8100 MW, Spain- 3175 MW, USA 4240 MW, Denmark 2417 MW, and India - 1426 MW top the list of countries. Thus, India ranks fifth in the world in Wind power generation. There are 39 wind potential stations in Tamil Nadu, 36 in Gujarat, 30 in Andhra Pradesh, 27 in Maharashtra, 26 in Karnataka, 16 in Kerala, 8 in Lakshadweep, 8 Rajasthan, 7 in Madhya Pradesh, 7 in Orissa, 2 in West Bengal, 1 in Andaman Nicobar and 1 in Uttar Pradesh. Out of 208 suitable stations 7 stations have shown wind power density more than 500 Watts/ m2.

Applications

- *Utility interconnected wind turbines generate power which is synchronous with the grid and are used to reduce utility bills by displacing the utility power used in the household and by selling the excess power back to the electric company.*
- *Wind turbines for remote homes (off the grid) generate DC current for battery charging.*
- *Wind turbines for remote water pumping generate 3 phase AC current suitable for driving an electrical submersible pump directly. Wind turbines suitable for residential or village scale wind power range*

from 500 Watts to 50 kilowatts."

The turbines mentioned above are not the impugned turbine ventilators but are ones used to operate machines with the help of the power which has been generated by the turbines. The 'RENEWABLES 2014-GLOBAL STATUS REPORT' in Tables as reproduced therein identifies the following categories of Technology associated with renewable energy :

POWER GENERATION
Bio-power from solid biomass (including co-firing and organic MSW)
Bio-power from gasification
Bio-power from anaerobic digestion
Geothermal power
Hydropower: Grid-based
Hydropower: Off-grid/rural
Ocean power: Tidal range
Solar PV: Rooftop
Solar PV: Ground-mounted utility-scale
Concentrating solar thermal power (CSP)
Wind: Onshore
Wind: Offshore
Wind: Small-scale
DISTRIBUTED RENEWABLE ENERGY IN DEVELOPING COUNTRIES
Biogas digester
Biomass gasifier
Household wind turbine
Village-scale mini-grid System
HOT WATER / HEATING / COOLING
Biomass heat plant
Domestic pellet heater
Biomass CHP
Geothermal space heating (buildings)
Geothermal space heating (district)
Ground-source heat pumps
Solar thermal: Domestic hot water systems
Solar thermal: Domestic heat and hot water systems (combi)
Solar thermal: Industrial process heat
Solar thermal: Cooling
TRANSPORT FUELS
Biodiesel
Ethanol

The Market and Industry trends as discussed herein touch the following areas only :

1. Biomass for heat, power and transport
2. Geothermal power and heat
3. Hydropower
4. Ocean energy
5. Solar Photovoltaics (PV)
6. Concentrating Solar Thermal Power
7. Solar Thermal Heating and Cooling
8. Wind Power

The discussion about renewable energy would not be complete if a reference to the Ministry of New and Renewable Energy (MNRE) is not made to. I have seen the website for the programmes undertaken by the Ministry and it is seen thus :

- **Under the heading 'Programmes/Technology'**, the following have been mentioned -

  Grid Connected Power, Off-Grid Power, Decentralized Systems, New Technologies

- **Under 'Grid Connected Power', it is described thus -**

"Grid-interactive renewable power projects based on wind power, biomass, small hydro and solar are mainly private investment driven, with favourable tariff policy regimes established by State Electricity Regulatory Commissions (SERC), and almost all-renewable power capacity addition during the years has come through this route.

Wind Power:

It aims at generation of competitively priced grid-interactive wind power. The programme also covers research and development and survey and assessment of wind resources."

- **Under sub-heading 'Wind' of the heading 'Grid Connected Power', it is described thus -**

"The broad based Wind Power Programme of the Ministry aims to catalyze commercialization of grid interactive wind power.

WIND RESOURCE ASSESSMENT

Under National Wind Resource Assessment programme, Ministry through National Institute of Wind Energy, Chennai (erstwhile Centre for Wind Energy Technology (C-WET)) and State Nodal Agencies had installed and monitored 794 dedicated Wind Monitoring Stations (WMS) of height ranging from 20 m to 120 m (20m, 25m, 50m, 80m, 100m & 120m) throughout the country as on 31.12.2014. Initially the wind monitoring was carried out only in known windy areas. Now it is extended to new/ uncovered areas which are not explored in earlier projects to complete the Indian Wind resource mapping. Further hundreds of private wind monitoring stations are also operational in the country. Based on the analysis on the data collected from these 700 plus WMS, it is found that 237 stations have economically preferable wind power potential greater than 200 W/m2.

POTENTIAL

The Potential for wind power generation for grid interaction has been estimated at about 1,02,788 MW taking sites having wind power density greater than 200 W/sq. m at 80 m hub-height with 2% land availability in potential areas for setting up wind farms @ 9 MW/sq. km.

TECHNOLOGY

Two types of wind turbines namely stall regulated and pitch regulated are being deployed in the country and abroad for grid-interactive power. The stall regulated wind turbines have fixed rotor blades whereas pitch regulated wind turbines have adjustable rotor blades that change the angle of attach depending upon wind speed. Both technologies have their own advantages and disadvantages. Wind turbines are also available with lattice, steel tubular and concrete tubular towers.

DEMONSTRATION PROGRAMME

An aggregate demonstration of wind power capacity of 71 MW has been established at 33 locations in 9 states viz., Andhra Pradesh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and West Bengal. Demonstration projects are implemented through the State Governments, State Nodal Agencies or State Electricity Boards. Demonstration projects will be taken up only in those states where commercial wind power projects have not yet been initiated/taken off.

DEPLOYMENT

A total capacity of 22,465 MW has been established up to December, 2014, mainly in Tamil Nadu, Gujarat, Maharashtra, Andhra Pradesh, Karnataka and Rajasthan. Wind electric generators of unit sizes between 225 kW and 2.1 MW have been deployed across the country. India now ranks 5th in the world after China, USA, Germany and Spain in grid connected wind power installations. A cumulative total of over 179 billions units of electricity have been fed to the State Electricity Grids up to March, 2014.

MANUFACTURING BASE OF WIND ELECTRIC GENERATORS

Wind Electric Generators are being manufactured in the country by a dozen manufacturers, through (i) joint ventures under licensed production (ii) subsidiaries of foreign companies, under licensed production and (iii) Indian companies with their own technology. An indigenization level up to 70% has been achieved in machines of unit sizes up to 500 kW. The import content is somewhat higher in higher capacity machines. The current annual production capacity of domestic wind turbines is about 9500 MW.

GUIDELINES FOR SETTING UP PROJECTS

The Ministry has been issuing guidelines for wind power development since July 1995 in order to bring about balanced growth of the sector. These guidelines relate to preparation of detailed project reports, micro-siting, selection of wind turbine equipment, operation & maintenance, performance evaluation, etc. A list of manufacturers of certified wind turbine machines is issued by CIWE on quarterly basis.

GUIDELINES FOR INSTALLATION OF PROTOTYPE WIND TURBINES
PROMOTIONAL POLICIES
A package of fiscal and financial incentives is available which includes concessions such as 80% accelerated depreciation, concessional custom duty on specified items, excise duty exemption, sales tax exemption, income tax exemption for 10 years, etc. In addition, State Electricity Regulatory Commissions (SERCs) are determining preferential tariffs. Indian Renewable Energy Development Agency (IREDA) provides loan for setting up wind power projects.
In 2009, the Ministry introduced a Generation Based Incentive (GBI) Scheme for wind power projects wherein wind power projects not availing the Accelerated Depreciation (AD) benefit are eligible for GBI incentive at the rate if Rs. 0.50 per unit of power fed to the grid subject to the ceiling of Rs. 1 Crore per MW. (link: http://mnre.gov.in/file-manager/grid-wind/gbi-scheme.pdf)
National Institute of Wind Energy (NIWE)
The National Institute of Wind Energy (NIWE), Chennai was established in Tamil Nadu in 1998 as an autonomous institution under the administrative control of the Ministry of New and Renewable Energy. CIWE main activities include resource assessment and testing & certification."

- **Under 'Off-Grid Power', it is described thus -**

"Distributed/decentralized renewable power projects using wind energy, biomass energy, hydro power and hybrid systems are being established in the country to meet the energy requirements of isolated communities and areas which are not likely to be electrified in near future.
Off-grid Renewable Energy / Power:
- *Biomass based heat and power projects and industrial waste to-energy projects for meeting captive needs*
- *Biomass gasifiers for rural and industrial energy applications*
- *Watermills/micro hydro projects – for meeting electricity requirement of remote villages*
- *Small Wind Energy & Hybrid Systems - for mechanical and electrical applications, mainly where grid electricity is not available.*
- *Solar PV Roof-top Systems for abatement of diesel for power generation in urban areas*

The main objectives of the programme are: supporting RD&D to make such systems more reliable and cost-effective, demonstration, field testing, strengthening manufacturing base."

- **Under the heading 'Small Wind Energy And Hybrid Systems Programme', it is stated thus-**

"The objective of the programme on Small Wind Energy and Hybrid Systems (SWES) is to develop technology and promote applications of water pumping windmills and aero-generators/ Wind-Solar hybrid systems including promotion by setting up of demonstration projects in North Eastern region and J&K areas."

- **Under the heading 'Decentralized Systems', it is stated thus -**

"Renewable energy technologies are ideally suited to distributed applications, and they have substantial potential to provide a reliable and secure energy supply as an alternative to grid extension or as a supplement to grid-provided power. Over 400 million people in India, including 47.5% of those living in India's rural areas, still had no access to electricity. Because of the remoteness of much of India's un-electrified population, renewable energy can offer an economically viable means of providing connections to these groups. Some of the renewable energy technologies that are used in villages and rural areas as decentralized systems are:
- *Family-size biogas plants.*
- *Solar street lighting systems.*
- *Solar lanterns and solar home lighting systems.*
- *Solar water heating systems*
- *Solar cookers.*
- *Standalone solar/ biomass based power generators.*
- *Akshay Urja / Aditya Solar Shops*
- *Wind pumps.*
- *Micro-Hydal plants.*

Many of these systems have been found useful in urban and semi urban areas also to conserve the use of electricity and other fossil fuels. Solar water heating systems have helped in demand side

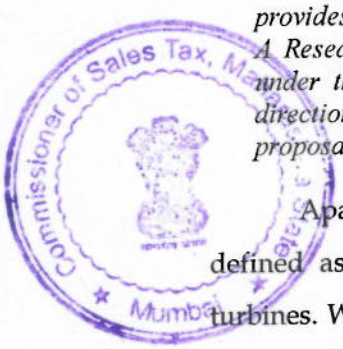
management of electricity in various cities and towns during peak hours. Standalone roof top SPV systems are getting popular for day time diesel abatement in areas where power cuts are very high."

- **Under the heading 'New Technologies',** it is stated thus -

  "The Ministry of New and Renewable Energy (MNRE) has taken up the following programmes on various New Technologies. As part of these programmes, research, development and demonstration projects have been initiated at various research, scientific and educational institutes, universities, national laboratories, industry, etc. These projects are helping in the development of indigenous research and industrial base, expertise, trained manpower and prototypes/devices/systems in the country
  - *Hydrogen Energy*
  - *Chemical Sources of Energy (Fuel Cells)*
  - *Battery Operated Vehicles*
  - *Geo Thermal Energy*
  - *Ocean Energy*
  - *Biofuels"*

- **Under the heading 'New Technologies',** it is stated thus -

  "The Ministry has been supporting Research, Design & Development (RD&D) in new and renewable energy since 1982. Considering that the market would largely drive the renewable energy sector, a scheme has been evolved for associating and supporting RD&D carried out by industry. This scheme provides guidelines for project identification, formulation appraisal, approval and financial support. A Research, Design & Development Project Appraisal Committee (RDPAC) has been constituted under the chairmanship of Secretary, MNRE for the purpose of giving guidance to the overall direction of RD&D effort in new and renewable energy. This Committee also elicits RD&D proposals, appraises them, and recommends financial support wherever required."



Apart from the above, I would also refer to what is 'wind energy'. Wind energy is defined as electrical energy obtained from harnessing the wind with windmills or wind turbines. Wind power is energy that is created through the conversion of wind into forms that are more practically useful, such as electricity. Wind energy is created through the use of Wind Turbines, or wind turbine towers.

From a reference to the various authorities and information as reproduced above, it can be seen that the impugned product has not been considered as a renewable energy device. Neither the Bureau of Energy Efficiency nor the MNRE consider the impugned product as being a renewable energy device. Further, it is seen that the projects or plants associated with renewable energy are the ones producing energy which is used to run the various equipments. As with sops, it is also seen that various sanctions and certifications are required to be complied with for such projects. However, the product does not have any certification from the appropriate authority as being a renewable energy device. I would now look to the items as are notified under this entry. They are :

11	*Wind mills and any specially designed services which run on wind mills.*
12	*Any special devices including electric generators and pumps running on wind energy.*
13	*Biogas plants excluding those to which entry 56A of Schedule 'A' applies and biogas engines (stove) and parts, components and accessories of biogas plants and biogas engines (stove) sold by a registered dealer who is certified by the Joint Commissioner of Sales Tax (Registration), Mumbai in the case of dealers registered in Mumbai and in all other cases by the concerned Joint Commissioner of Sales Tax (VAT Administration)..*
14	*Agricultural and municipal waste conversion devices producing energy.*
15	*Equipment for utilising ocean waves and geo-thermal energy.*

Certain items (sr.no.1 to 10) in the above notification were omitted w.e.f 1st July, 2009

and notified as solar energy devices. These were :

(1) Flat plate solar collectors.
(2) Concentrating and pipe type solar collectors.
(3) Solar cookers.
(4) Solar water heaters and systems.
(5) Solar air heating system, solar gas heating system or solar fluid heating system.
(6) Solar crop driers and systems.
(7) Solar stills and de-salination systems.
(8) Solar pumps based on solar thermal and solar photovoltaic conversion.
(9) Solar power generating systems.
(10) Solar photovoltaic modules and panels, for water pumping and other applications.

As can be seen, the entries pertaining to solar energy were omitted as a separate schedule entry was carved out for solar energy devices under the MVAT Act,2002 attracting tax @NIL%. I revert to the notification and the items as standing notified therein as 'renewable energy devices'. A look at the items notified and the impugned product reveals thus :

- *The items notified are of the types such as -*
    a. *ones producing renewable energy for use by items to run thereon*
    b. *ones working on the renewable energy produced by devices*
- *The present product as in a rooftop turbine ventilator, a ventilation device does not find an express mention in the notification.*

When the items as are notified like wind mills, biogas plants, etc. are seen, it cannot escape our attention that these are the ones which find a mention in the texts of the authorities responsible for the conservation of energy. Apart from such products, one finds that the notification also provides for an entry for '*any special devices including electric generators and pumps running on wind energy*'. We have seen above that wind energy is the electrical energy obtained from harnessing the wind with windmills or wind turbines. Thus, wind energy as understood in the above entry is the energy that is created through the conversion of wind into forms such as electricity through the use of wind Turbines, or wind turbine towers. In the present case, we find that the impugned product -

a. *does not run on wind energy which is created through the use of turbines.*
b. *runs on the wind.*

Since the impugned product does not run on wind energy, it would not fit into the description as has been notified. The scheme of things in this entry runs on wind energy and wind energy is the energy produced from wind by using turbines. It, therefore, could be explained as to why the impugned product with its mode of functioning hasn't been considered as a renewable energy device by the various sources referred to by me hereinearlier.

Also, the words '*including electric generators and pumps*' should not be missed herein. In fact, they further help corroborate what has been said by me and which is, the entry is for devices which run on wind energy or electricity which has been generated. The words used are 'wind energy' and not 'wind'. Hence, the words 'electrical generators and pumps' could be

explained as being devices which are run on electricity, the 'wind energy', which has been produced from 'wind'.

The entry could also be seen from yet another angle while interpreting the significance of the words *'including electric generators and pumps'*. The preceding words borrow colour from the later words as appearing in the entry. The principle of *Ejusdem Generis* would come into play here. The principle says that - ***where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.*** In the present case, neither does the device produce renewable energy nor does it run on the renewable energy produced by any mechanism in place for running such a device. The words after the word 'including' suggest about electric generators and pumps running on wind energy. Therefore, the devices sought to be covered under this entry are the ones which would be running on the electricity generated from the renewable source of wind. In addition to this, it is also seen that the present device could not be said as being a special device as these devices are known as 'ventilation devices' or 'industrial exhaust fans'. At no times and in no context, have these been classified as 'renewable energy devices' and this fact is corroborated from a reference to the various authorities cited above which help to throw light on what is understood by renewable energy devices. As mentioned above, being a manufacturer, the applicant holds no certification about renewable energy device. Therefore, I am of the opinion that the impugned product is not covered by the description under clause (12) of the notification issued for the purposes of the schedule entry C-82 of the MVAT Act,2002. The basis of my opinion could be summarized thus :

- *The impugned product runs on wind and not the wind energy or electricity which has been generated.*
- *It does not have any certification from the appropriate authority as being a renewable energy device.*
- *It is a ventilation device.*
- *The impugned product has never been considered as a renewable energy device.*
- *The projects or plants/equipments associated with renewable energy are the ones producing energy which is used to run the various equipments.*
- *The items notified under the entry for the MVAT Act,2002 are of the types such as -*
    - *ones producing renewable energy for use by items to run thereon*
    - *ones working on the renewable energy produced by devices*
- *The entry under which claim has been laid covers products which run on the wind energy i.e the electricity generated from wind by use of turbines.*

The applicant has pointed out that a similar product is held as a renewable energy device in a ruling under the Karnataka Value Added Tax Act. I have seen the entry description (*Renewable energy devices and parts thereof*) under the said Act and it is seen that it does not speak of a notification. The entry under the MVAT Act is different in the sense that only notified renewable energy devices would be covered by the entry. Thus, those which haven't been notified don't stand covered by the entry and in absence of a specific entry therefor, find placed in the residuary schedule entry E-1.

In the present case, for the impugned product to fall under the schedule entry, it should have qualified for coverage under the descriptions as notified. The impugned product is not a wind mill or a biogas plant and is neither an agricultural and municipal waste conversion device producing energy nor an equipment for utilising ocean waves and geo-thermal energy. This leaves us with the description under clause (12) and we have seen that the impugned product is not covered by the description under the said clause (12) of the notification issued for the purposes of the schedule entry C-82 of the MVAT Act,2002. In absence of a specific entry for the impugned product, the same gets placed in the residuary schedule entry E-1, thereby liable to tax @12.5%.

Since the schedule entry covers renewable energy devices as notified and spare parts thereof, the applicant had also requested to determine whether the spare parts of the impugned product are covered by the aforesaid entry. I have observed above that the impugned product is not covered by the aforesaid schedule entry. Since the entry does not cover the impugned product, there arises no question of the spare parts being covered by the said entry. In absence of any specific entry, these would fall in the residuary schedule entry E-1, thereby liable to tax @12.5%.

05. **PROSPECTIVE EFFECT**

The applicant has requested for prospective effect to the determination order in case the contention is not acceptable. A request for prospective effect is to be weighed in terms of the provisions and attending circumstances. The applicant is very much aware of his product being classified as a ventilator or an exhaust fan by the industry. The authoritative data which I have referred to above is very much available for all to view. Further, as a manufacturer, the applicant wasn't holding any certification as being a manufacturer of renewable energy devices. Reliance on a ruling in some other statute would not make any case for the applicant as the facts are not the same. We have seen above that the entry under both the statutes differs. For the purposes of the MVAT Act,2002, the impugned product should have qualified for coverage under the description for the purposes of the notification under the schedule entry. I have discussed in elaborate terms as to the product not being covered by the description under

the clause (12) of the notification issued for the purposes of the schedule entry C-82 of the MVAT Act,2002. It is seen that there is no ambiguity surrounding the entry. Neither is there any statutory mis-guidance to the applicant. The applicant has stated that similar product in the market is being sold @5% as covered by the schedule entry C-82 of the MVAT Act. In this regard, I have to say that the rate at which tax is to be discharged is based on the schedule entry as exists in the statute and not on the rate at which dealers of similar product are discharging the liability with regard to the said product. In view of all the above reasons, I am not inclined to accept the request for prospective effect.

06. In the circumstances, it is determined thus -

ORDER

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

No. DDQ 11/2013/Adm-6/17/ B- 2 **Mumbai, dt.** 20/07/2015

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

1. *the product 'Wind Operated Turbo Ventilator' is not covered by the description under clause (12) of the notification issued for the purposes of the schedule entry C-82 of the MVAT Act,2002.*
2. *the product not being covered by the schedule entry C-82, its spare parts would also not stand covered by the said entry.*
3. *in absence of a specific entry for the impugned product and its spare parts, the product and its spare parts get placed in the residuary schedule entry E-1, thereby liable to tax @12.5%.*
4. *the request for prospective effect is rejected.*

(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI