

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. K.J. Valsala Kumari,
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. T.V. Kamala Bai,
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. S.K. Suchala Kumar,
Joint Commissioner (Audit & Inspection),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub :- KVAT Act, 2003 - Clarification U/s 94 - Rate of tax of the commodity Home UPS 850 VA, manufactured by M/s American Power Conversion Corporation (APC) with model number BI850SINE - Orders issued.

Read :- 1. Application from M/s. Rashi Peripherals Pvt. Ltd. Kochi dtd. 13/6/2011.
2. This Office Notice of even No. dtd. 23/9/2011.
3. This Office Notice of even No. dtd. 19/10/2011.
4. This Office Notice of even No. dtd. 25/6/2012.
5. This Office letters of even No. dtd. 20/9/2012.
6. Letter No. TVM/ITBG/RC/CT/2012-13 of Sri. Rajeevan Chaladan, Deputy General Manager, I.T. Business Group, M/s. Keltron, Thiruvananthapuram dtd. 3/10/2012.

ORDER No.C3/20085/11/CT DATED 30/11/2012.

1. M/s. Rashi Peripherals Pvt. Ltd. Kochi has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification on the rate of tax of the product Home UPS 850 VA, manufactured by M/s American Power Conversion Corporation (APC) with model number BI850SINE.

2. The applicant is registered with the Office of Assistant Commissioner (Assessment) Special Circle III, Ernakulam and is a dealer in computers and peripherals.

3. The applicant contends that the product in question viz. HOME UPS 850 VA is similar to the product whose tax rate was in dispute in Goyal Motor Parts Vs. State of Punjab and Another reported in [2011] 038 VST 159 and therefore, the decision rendered therein by the Hon'ble High Court holding that UPS-EB is classifiable under the Un-interrupted Power Supply

and thus taxable at 4% would be squarely applicable to their product, HOME UPS 850VA i.e. the impugned product under clarification.

4. The applicant has also submitted a written statement on Uninterrupted Power Supply, its capabilities in correcting common utility power problems, description of inverter, and also the differences between Uninterrupted Power Supply and inverter.

5. The applicant would further contend that though the function of both UPS System as well as an inverter is to provide backup power during mains outage, in case of a UPS the switch is instantaneous whereas with the inverter there is a time lag, as the switch has to be triggered before the supply is restored. In case of a power outage, delay in the inverter system to restore power supply causes critical load such as personal computers to fail. For such systems to function continuously during a power outage, it requires Uninterrupted Power Supply without any time lag which can be provided only by a UPS System and not by an inverter.

6. The applicant would further contend that the HOME UPS 850 VA is identified with the model number BI850SINE and it is a UPS System. The Home UPS provides power to connected equipment during a power outage. If there is a loss of power or if the mains voltages are abnormal, the UPS will automatically switch any connected equipment to battery power. The UPS can be hardwired into a home electrical system to supply power to equipments. The key feature of the product is that it performs the functions of both a UPS system and electric inverter and can be determined by the technical specification.

7. The applicant has referred Section 6(1)(a) and (d) of the Kerala Value Added Tax Act and also the Rules of Interpretation of the Schedules.

8. The applicant contends that Uninterrupted Power Supply System is classifiable under Entry 69 (27) of the Third Schedule to the Act which reads:

69 IT Products

(27) *Uninterrupted power supply* 8504.40

9. The applicant contends that the correct classification of the product in question as per the Central Excise Tariff Act, 1985 is under HSN 8504.40.90. Therefore by virtue of the Rules of Interpretation of Schedules of the Act, Entry 69(27) would include the entry CTH 8504.40.90 unless this sub-heading is specifically classified elsewhere in the Act and hence would be liable to tax at 4%.

10. The applicant has referred the Central Excise Tariff Act, 1944 relevant to the case at hand which reads:

8504 ELECTRICAL TRANSFORMERS, STATIC CONVERTERS (FOR EXAMPLE, RECTIFIERS) AND INDUCTORS

8504 40	-	Static converters:
8504 40 10	---	Electric inverter
		Rectifier :
8504 40 21	----	Dip bridge rectifier
8504 40 29	----	Other
8504 40 30	---	Battery chargers
8504 40 40	---	Voltage regulator and stabilizers (other than automatic)
8504 40 90	---	Other

11. The applicant contends that as per the Rules of Interpretation, the eight digit residuary HSN Code 8504.40.90 is included in the six digit HSN 8504.40, as it is not found anywhere else in the Schedule and hence is taxable at the rate of 4%.

12. Electric inverter classified under HSN Code 8504.40.10 however does not follow the six digit HSN 8504.40 as it is specifically mentioned in the Residuary Schedule to the Act and is taxable at 12.5% vide Entry 33(5) of S.R.O. No. 82/2006.

13. The applicant contends that the opinion given by the Harmonized System Committee on Uninterrupted Power Supply Apparatus falling under Chapter heading 8504 has a lot of persuasive value and should be taken as binding as held by the Delhi High Court in Manisha Pharma Plasto Pvt. Ltd Vs Union of India 1999(112) E.L.T. 22. The applicant placing reliance on the decision of Tribunal in Luminous Electronics Pvt. Ltd Vs Commissioner of Central Excise 2001(129) E.L.T. 605 (Tri - Del) and the judgment of the Apex Court in J.K. Synthetics Ltd. Vs. Commissioner of Central Excise 2003(152) E.L.T. 35 (SC) contends that a UPS System is classifiable under the HSN Code 8504. The applicant contends that since the product of the applicant is not specifically classified under a specific head in the HSN, it shall be classifiable under the HSN 8504.40.90 which is a residuary entry. The applicant would also contend that the impugned product HOME UPS 850 VA is classifiable under the head 8504.40 found in the Third Schedule and is taxable at 4%.

14. The applicant further contends that the manufacturer M/s. APC India Pvt. Ltd has classified the goods under Chapter Heading 8504.40.90 for Central Excise purposes. The applicant is only a distributor of the said goods and buys and sells these goods without carrying out any activity on such goods.

15. The applicant placing reliance on the judgment of the Madras High Court in State of Tamil Nadu Vs Vinyl Cable Industries (1993) 88 STC 430 contends that in case of classification, end use of the product is irrelevant when there is no reference to the use or adaptation of the articles, the basis of end use for classification under a Tariff Entry. Placing reliance on the judgment of the Apex Court in M/s. Dunlop India Ltd. Vs. Union of India & Others 1983 E.L.T. 1566 (SC), the applicant contends that if an item can be reasonably covered by one of the specific entries in a Schedule, then the same should not be put under

the category of residual goods which is meant for only those goods which cannot be covered under the specified entry .

16. The applicant would conclude that the product sold by them is essentially a UPS which falls under static converter, and hence is classifiable under the head Uninterrupted Power Supply with HSN 8504.40. The applicant has requested to clarify whether the UPS manufactured by M/s APC are classifiable under the Entry 69 (27) of the Third Schedule to the Act taxable at 4%.

17. The authorised representative of the applicant was heard on 21//11/2011. Due to the change in the members of the Authority for Clarification, the application could not be disposed off and the case was once again heard on 28/6/2012. The case was once again heard on 26/9/2012 in the presence of Sri. Rajeevan Chaladan, Deputy General Manager, I.T. Business Group, M/s. Keltron, Thiruvananthapuram.

18. Sri. Rajeevan Chaladan, Deputy General Manager, I.T. Business Group, M/s. Keltron, Thiruvananthapuram vide letter read as paper 6 above has submitted his report on the demonstration of the product BI850SINE conducted by M/s. Rashi Peripherals. The report is extracted below:

The difference between a UPS and an Inverter

Both UPS and inverter provide backup power during mains outage. The basic difference between the two is time lag. While a UPS instantly starts supply, with an inverter there is a lag of around half a second which is unacceptable if the device connected to it is a computer. An off-line UPS switches to batteries in 3 to 8 milliseconds, after the main power has been lost. The typical inverter changes over in about 500 milliseconds. This gap is OK for household gadgets such as lights, fans, fridge etc. but not acceptable for computers. A computer will reboot with such a gap in power supply.

Demonstration conducted by M/s. Rashi Peripherals on 26.09.2012

M/s. Rashi Peripherals has conducted a demonstration of the product, Home UPS 850 VA, manufactured by M/s. American Power Conversion Corporation popularly known as APC. The model number of the product is BI850SINE. The demonstration was basically to verify the performance of the equipment during power failure and ascertain its change over from mains to batteries. For this, one computer was connected to the mains supply. When the mains supply was switched off, the computer was working normally, without rebooting, This indicates that the switch over time is less than 500 milliseconds and the product BI850SINE is performing just like a conventional UPS.

Comments based on the demonstration

The product Home UPS 850 VA, manufactured by M/s American Power Conversion Corporation (APC) with model number BI850SINE may be treated as a UPS as claimed by the manufacturer as well as its distributor.

19. As per the Rules of Interpretation of the Kerala Value Added Tax Act, 2003, the goods have to be interpreted with respect to the Entry in the Schedule and with the HSN Code mentioned therein. As such, considering the arguments, the classification under Central Excise Act made by the manufacturer, and the report of the technical expert based on the demonstration conducted it is clarified that the commodity Home UPS 850 VA, manufactured by M/s American Power Conversion Corporation (APC) with model number BI850SINE would be taxable at the rate of 5% by virtue of Entry 69(27) of the Third Schedule to the Kerala Value Added tax Act, 2003.

The issues raised above are clarified accordingly.

K.J. Valsala Kumari
Joint Commissioner (General)

T.V. Kamala Bai
Joint Commissioner (Law)

S.K. Suchala Kumar
Joint Commissioner (A&I)

To,

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