

(Issued vide no. 604/ST-1, dated 7.4.2006)

**ORDER OF CLARIFICATION MADE BY SHRI L.S.M. SALINS,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003**

Querist: JCB India

The short question seeking answer in this case is whether earthmoving equipment is 'Plant and machinery' thereby falling in entry 62 in Schedule C to the Haryana Value Added Tax Act, 2003 ('the Act') or not.

2. Entry 62 in Schedule C to the Act reads, "Plant and machinery". This term has not been defined in the Act. The meanings of words, 'plant' and 'machinery' given in Merriam Webster's Collegiate Dictionary are as under –

Plant

- 1 a : a young tree, vine, shrub, or herb planted or suitable for planting
b: any of a kingdom (Plantae) of living things typically lacking locomotive movement or obvious nervous or sensory organs and possessing cellulose cell walls
- 2 a: the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business
b: a factory or workshop for the manufacture of a particular product
c: the total facilities available for production or service
d: the buildings and other physical equipment of an institution
- 3 : an act of planting
- 4 : something or someone planted

Machinery

- 1 a: machines in general or as a functioning unit b: the working parts of a machine

2 : the means or system by which something is kept in action or a desired result is obtained <the machinery of government> <genetic machinery of cells>

Machine

1 a archaic: a constructed thing whether material or immaterial

b : conveyance, vehicle; especially : automobile

c archaic: a military engine

d : any of various apparatuses formerly used to produce stage effects

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e (1): an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner

(2) : an instrument (as a lever) designed to transmit or modify the application of power, force, or motion

f : a mechanically, electrically, or electronically operated device for performing a task <a calculating machine> <a card-sorting machine>

g : a coin-operated device <a cigarette machine>

h : machinery - used with the or in plural

2 a : a living organism or one of its functional systems

b : a person or organization that resembles a machine (as in being methodical, tireless, or unemotional)

c (1) : a combination of persons acting together for a common end along with the agencies they use

(2) : a highly organized political group under the leadership of a boss or small clique

3 : a literary device or contrivance introduced for dramatic effect

3. It is seen from the above that for the purpose of construction of the meaning of the term 'plant and machinery', the plant should mean a) the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business, b) a factory or workshop

for the manufacture of a particular product, c) the total facilities available for production or service; machinery shall mean machines as a functioning unit or the working parts of such machines, and machine shall mean a): an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner, b): a mechanically, electrically, or electronically operated device for performing a task. Construed thus, the expression 'plant and machinery' shall mean such machinery, equipment and apparatus which are set up at a place on land / in buildings for industrial production of goods and services. It may be noted that the word 'plant' and the word 'machinery' when used singly will connote more general and varied meanings (as are given in para 2 above) than when the two words are used together.

4. In [1999] 113 STC 161 [SC] G. Radhakrishna Murthi & Co. and Others v. Commercial Tax Officer-IVB, Vijayawada and Others (and other appeals and writ petition), the Supreme Court quoted with approval the rule of construction quoted below, applied by Bombay High Court in Commissioner of Sales Tax, Maharashtra State, Bombay v. Gordhandas Tokerey [1983] 52 STC 381 (Bom) while distinguishing the earlier

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decision of the Supreme Court in Indian Herbs Research and Supply Co. [1970] 25 STC 151 (SC). The Court also quoted with approval the decision of Punjab & Haryana High Court in the case of Assessing Authority, Amristar v. Amir Chand Om Parkash [1974] 33 STC 120 (P&H) wherein the Court held that dhoop-batti would not be included in the word 'perfumery' used in entry "Cosmetics, perfumery and toilet goods, but not including tooth-paste, tooth powder, soap and kum kum." because the entry relate to items of personal grooming or beautification and dhoop-batti is not such an item.

Rule of construction

"... the well-known rule of construction was that words in entries have to be construed with reference to the words found in immediate connection with them. When two or more words which are capable of being understood in an analogous manner are coupled together, they should be

understood in the common analogous sense and not in a general sense.”

5. Applying the aforesaid rule of construction, it is clear that only such machinery would qualify to be covered under the entry ‘Plant and machinery’, which is used in a plant for production of goods or services on an industrial scale. Apparently such machinery will not include earthmoving equipment, so these will attract tax @12.5% as a non-schedule item.

(L.S.M.SALINS)

Chandigarh
Dated: 30.3.2006

Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise & Taxation Department