

**(Issued vide no. 616/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: Venus Industrial Gases, Kurukshetra**

The question raised in this case is whether industrial gases i.e. Oxygen, Nitrogen, Carbon Dioxide, Ammonia, Argon, Nitrous Oxide, Dissolved Acetylene, Helium, Hydrogen, all refrigerant gases, all medical gases and all liquid and cryogenic gases compressed in cylinders, containers and tankers are taxable @4% or 12.5%.

2. The goods leviable to tax @4% are listed in Schedule C to the Act. Entry 102 in the said Schedule describes 'Industrial inputs and packing materials'; sub-entries (32) to (35) thereof read, as under –

<b>Serial No.</b>	<b>Description of Goods</b>	<b>Tariff item under which goods specified in column 2 are covered</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
102		
(32)	Fluorine, Chlorine, Bromine and Iodine	2801:00:00
(33)	Sulphur, sublimed or precipitated; colloidal sulphur	2802:00:00
(34)	Carbon (carbon blacks and other forms of carbon not elsewhere specified or included)	2803:00:00
(35)	Hydrogen, rare gases and other non-metals	2804:00:00

The Central Excise Tariff to which these sub-entries refer in column 3 and wherefrom these have been bodily lifted for incorporation in the Schedule, reads, as under-

<b>Tariff Item Description of goods Unit Rate of duty</b>			
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
<b>I.—CHEMICAL ELEMENTS</b>			
<b>2801 FLUORINE, CHLORINE, BROMINE AND IODINE</b>			
2801 10 00	Chlorine	kg.	16%
2801 20 00	Iodine	kg.	16%
2801 30 - Fluorine; bromine :			
2801 30 10	Fluorine	kg.	16%
2801 30 20	Bromine	kg.	16%
<b>2802 SULPHUR, SUBLIMED OR PRECIPITATED; COLLOIDAL SULPHUR</b>			

2802 00	- Sulphur, sublimed or precipitated; colloidal sulphur :		
2802 00 10	Sublimed sulphur	kg.	16%
2802 00 20	Precipitated sulphur	Kg.	16%
2802 00 30	Colloidal sulphur	Kg.	16%

**2803 CARBON (CARBON BLACKS AND OTHER FORMS OF CARBON NOT ELSEWHERE SPECIFIED OR INCLUDED)**  
 2803 00 - Carbon (carbon blacks and other forms of carbon not elsewhere specified or included) :

2803 00 10	Carbon blacks	Kg.	16%
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2803 00 20	Acetylene black	Kg.	16%
2803 00 90	Other	Kg.	16%

**2804 HYDROGEN, RARE GASES AND OTHER NON-METALS**

<b>2804 10 00</b>	<b>Hydrogen</b>	<b>Kg.</b>	<b>16%</b>
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- Rare gases :

2804 21 00	Argon	Kg.	16%
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2804 29 -- Other :

2804 29 10	Helium	Kg.	16%
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2804 29 90	Other	Kg.	16%
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2804 30 00	Nitrogen	Kg.	16%
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2804 40 Oxygen :

2804 40 10	Medicinal grade	Kg.	Nil
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2804 40 90	Other	Kg.	16%
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2804 50 Boron; tellurium:

2804 50 10	Boron	Kg.	16%
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2804 50 20	Tellurium	Kg.	16%
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- Silicon:

2804 61 00	Containing by weight not less than 99.99% of silicon	Kg.	16%
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2804 69 00	Other	Kg.	16%
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2804 70 Phosphorus:

2804 70 10	Phosphorus, black	Kg.	16%
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2804 70 20	Phosphorus, red	Kg.	16%
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2804 70 30	Phosphorus, white or yellow	Kg.	16%
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2804 80 00	Arsenic	Kg.	16%
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2804 90 00	Selenium	Kg.	16%
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Sub-heading 2804 40 includes, liquefied or solidified gas.

3. While other items specified in sub-entries (32) to (35) are more or less self explanatory, the term 'other nonmetals' used in sub-entry (35) needs to be explained. Nonmetals are substances that do not exhibit such characteristic properties of metals as hardness, mechanical adaptability, or the ability to conduct electricity. The classification is generally applied to the chemical elements: carbon, nitrogen, phosphorus, oxygen, sulphur, selenium, fluorine, chlorine, bromine, iodine; and the noble gas elements (also called rare gases): helium, neon, argon, krypton, xenon, radon. These elements have few physical properties in common. Rare gases, nitrogen, oxygen, fluorine and chlorine are gases, bromine is liquid and others are solids. Boron,

silicon, germanium, arsenic, antimony, tellurium and polonium are metalloids (semimetals). In the Central Excise Tariff, nonmetals are listed under four separate Headings: 2801 – fluorine, chlorine, bromine and iodine; 2802 – sulphur, sublimed or precipitated; colloidal sulphur; 2803 – carbon (carbon blacks and other forms); and 2804 – hydrogen, rare gases and other nonmetals. Metalloids have been included in 2804 as nonmetals. Sub-entries 102(32) to 102(35) in Schedule C to the Act correspond to Headings 2801 to 2804 of the Central Excise Tariff respectively. Thus ‘other nonmetals’ in sub-entry 102(35) will refer to those nonmetals which are not specifically enumerated in sub-entries (32) to (35). These have been enumerated under Heading 2805 of the Central Excise Tariff and will include oxygen.

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4. It may be noted that it has been stated in Note 3 to Schedule C to the Act that in entry 102 of the Schedule only goods of the description contained in column 2 shall form part of the Schedule and reference to Tariff item in column 3 from the Central Excise Tariff Act shall not include other goods not contained in column 2 though part of the Heading. In the present case, it is noted that there is nothing in the items described under headings 2801 to 2804 in the Central Excise Tariff which does not form part of the Headings. Enumeration under the Headings is merely explanatory; it does not expand their meaning.

5. It may be noted that once an item has been enumerated under entry 102, it will have to be given its natural meaning in its full amplitude. Medicinal grade oxygen is also oxygen. Oxygen is a nonmetal, thus included in sub-entry 102(35) of Schedule C. Hospital viewed as a service industry, medicinal grade oxygen should form part of sub-entry 102(35).

6. Further ‘ammonia’ mentioned in the query falls in sub-entry 102(44) in Schedule C to the Act as the entry reads ‘Ammonia, anhydrous or in aqueous solution’. So ammonia, both in anhydrous form as well as in aqueous solution, is part of the entry.

7. In view of the discussion above, it is concluded that Oxygen (both industrial and medicinal grade), Argon, Helium and Hydrogen supplied in cylinders, containers, tankers or otherwise and Ammonia (both anhydrous or in aqueous solution) are part of Schedule C to the Act and their sale will attract tax @4%. Other gases mentioned by the querist like Carbon Dioxide, Nitrous Oxide (though mentioned at 2811 21 and 2811 29 30 respectively in Central Excise Tariff) are not part of Schedule C to the Act as no entry in Schedule C refers to Heading 2811 in the Central Excise Tariff and these will attract tax @12.5%. Dissolved Acetylene is also not part of Schedule C and will attract tax 12.5%. It may be clarified that Acetylene black (entry 2803 00 20 in

Central Excise Tariff) is part of Entry 102 (34) in Schedule C but  
Dissolved Acetylene is different from Acetylene black.

(L.S.M.SALINS)

Chandigarh  
Dated: 30.3.2006

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