



INDIAN DRUG MANUFACTURERS' ASSOCIATION

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4th March'2013

Shri Ajit A Pawar,
Hon'ble Deputy Chief Minister, and
Minister for Finance, Planning and Energy
Government of Maharashtra,
Mantralaya,
Madame Cama Rd, Churchgate,
Mumbai, - 400032

**Sub: Representation in respect of Maharashtra Sales Tax Rate of 12.5%
for some of the drug formulations vide entry Sr. No.29 in Schedule
C for Drugs**

Respected Sir,

We are pleased to inform you that Indian Drug Manufacturers' Association (IDMA) has been, since its inception in 1961, the engine leading the Indian Pharmaceutical Industry to greater heights and glory and ensuring near self-sufficiency of affordable quality medicines for our people. IDMA has a strong membership of over 700 formulations and API manufacturers throughout the country with 5 State Boards. Today, the Indian Pharma Industry has a turnover of well over Rs. 120,000 crores with exports of 50% of the turnover of these safe and efficacious quality affordable medicines all over the world.

IDMA, as the apex national body of Pharmaceutical and API manufacturers in our country, is rightly known as the "Voice of the National Sector". IDMA, you will be pleased to know, is the only Association comprising of small, medium and large scale pharmaceutical manufacturers situated throughout the length and breadth of our country.

Many of our Members manufacture antiseptics & disinfectants with WHO GMP certification. They are aggrieved by the entries under the MVAT Act, 2002 with different Sales Tax rates of 5% & 12.5% respectively for the items falling under the same category of Drugs!

Drugs Formulations / Preparations are covered by entry at Sr. No.29 of Schedule C of the Act attracting sales tax at 5%. However, there are conditions applicable for claiming Tax Rate of 5%. If the products do not comply with the conditions then the same fall in the residuary entry. Please refer following entries:

Schedule C - List of Goods for which the Rate of Tax is 5%

<i>Sr No.</i>	<i>Name of the Commodity</i>	<i>Rate of Tax</i>	<i>Date of effect</i>
29 (a)	<i>“ Drugs (including Ayurvedic, Siddha, Unani, Spirituous Medical Drugs & Homeopathic Drugs) being manufactured or preparations conforming to the following descriptions -</i>	5%	1.4.2010 to date
	<i>Any medicinal formulations or preparations ready for use internally or on body of human beings, animals & birds for diagnosis, treatment, mitigation or prevention of any diseases or disorders, which is manufactured or imported into India, stocked, distributed or sold under license granted under the Drugs & Cosmetics Act, 1940 but does not include mosquito repellants in any form”</i>		

Schedule E - List of Goods for which the Rate of tax is 12.5%

1	<i>All goods not covered in any of the other schedules</i>	12.5%	1.4.20 05 to till date
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There are following three conditions in above entry to qualify for 5% tax rate: -

- 1) Medicinal formulation or preparation for use internally or on body of human beings, animals & birds
- 2) These formulations are for diagnosis, treatment, mitigation or prevention of any diseases or disorders
- 3) They are manufactured / imported into India, stocked, distributed or sold under license granted under the Drugs & Cosmetics Act,1940.

There are many formulations like Instrument Disinfectants / Sterilants or Surface Disinfectants or OT & Critical Area Disinfectants which qualify 2nd & 3rd conditions but not the first one viz., for internal or on body of human beings, animals or birds. Details of Medicinal formulations which are not used on the body of human beings but are being used and which are vital for prevention of diseases are stated below -

Medicinal formulations	Details of area or objects to be disinfected	Nexus & importance w.r.t. prevention of diseases	Reference
Disinfectants for Healthcare / Medical & Surgical Equipments / Instruments	Surgical tools, Endoscopes, Laproscopes, Gastro Endoscopes, etc	To prevent Cross infections & Hospital acquired infections	CDC Guidelines, WHO guidelines for prevention of hospital acquired infection
Surface Disinfectants required in the hospitals	OT Tables, OT Furniture, floor, walls, Infant's Incubator & all the devices, linens & inanimate objects in the vicinity of patients	To prevent Hospital acquired infections	CDC Guidelines, WHO guidelines for prevention of hospital acquired infection

Disinfectants for environment in the hospitals	Operation Theaters, Wards, ICU, Ambulances	To prevent Hospital acquired infections	CDC Guidelines, WHO guidelines for prevention of hospital acquired infection
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These formulations as per above referred entry, attract 12.5% tax rate in Maharashtra. Whereas in all other States (except Maharashtra) there is no such differentiation and all the drug formulations used for diagnosis, treatment, mitigation or prevention of any diseases or disorders are charged only at 5.5% maximum (**Annexure I**). We wish to bring to your kind notice, another entry viz. C-34 under the MVAT Act, 2002 which is for insecticides, pesticides etc. The entry is reproduced below -

“Fertilizers including biofertilisers, insecticides, pesticides, fungicides, weedicides, rodenticides, herbicides, antispouring products, plant growth promoters or regulators, micronutrients but not including disinfectants”

Thus, insecticides, pesticides etc. are also liable to tax at 5%. However, this entry also excludes disinfectants.

It is doing injustice to the manufacturers in Maharashtra as they cannot compete with manufacturers based in other states due to the additional rate of 7.5% imposed under sales tax on local manufacturers. They lose business not only in Maharashtra but also all over India, because C Form is not issued by the Hospitals, the major customers of these items being institutional products. If such Hospitals purchase these goods from the dealers in Maharashtra, then they will need to pay Central Sales Tax (CST) to such dealers at 12.5%, whereas, the CST on purchases from other States is maximum 5.5%.

The Hon'ble Bombay High Court in the case of Merind Ltd. v. State of Maharashtra (2004) has also ruled that all formulations should be treated

as a common category (**Annexure II**). The Hon'ble High Court ruled that "we hold that the diagnostic kits which are held to be medicinal formulations/preparations would be classifiable under entry C-II-37 and not classifiable under entry C-II-106." The category references (item sr nos. 37 and 106) are provided in **Annexure III** for immediate reference.

More & more products are being introduced in the category of instruments disinfectants / sterilants, surface disinfectants or OT & critical area disinfectants, the magnitude of the problem is increasing day by day. The vendors in Maharashtra are loosing business due to this anomaly in Sales Tax, whereas the basic rates are quite competitive and also the quality standards are at par with international standards.

We seek your indulgence and request you to kindly request you to immediately take up this matter with the concerned departments/authorities to rectify the anomaly at the earliest.

Thanking you,

Yours sincerely,

B G Barve
Chairman
Excise & Taxation Subcommittee

Encl: Annexure I- Sales Tax Schedule from 1.4.2005 to date

Annexure II - Judgement of Merind Limited

Annexure III - Category references (item sr nos. 37 and 106)