

**IN THE COURT OF COMMISSIONER
DEPARTMENT OF TRADE AND TAXES
GOVERNMENT OF N.C.T. OF DELHI
VYAPAR BHAWAN, NEW DELHI**

No: 284/CDVAT/2011/08

Dated: 25.04.2011

Somya Graphics
K-12, Navin Shahdara,
Delhi-110032

ORDER

Present for the Applicant : Sh. Badri Kumar, A.R.
Present for the Department : Sh. T.C. Sharma, DR.

The above named applicant has filed this application u/s 84 of the Delhi Value Added Tax Act, 2004 (herein after referred to as the "said Act") and the question put up before this Court for determination under the aforesaid provision of law is as under :

- a. Since sale of printed educational books by publishers is exempted from VAT, they (publishers) do not agree to pay VAT to the printers for printing and supplying the same educational books as complete job including the cost of paper.
 - i. The question here is whether the publishers are liable to pay VAT to the printers who print and supply educational books on their (publishers) behalf as a complete job (with paper used by printers)?
 - ii. In case yes, then what will be rate of VAT payable to the above?
 - b. If a customer places an order for complete job with his name (when paper and packaging material are used by the printer) with a printer, what will be rate of VAT chargeable by the printer?
 - c. If a customer situated out of Delhi places an order for complete job with his brand name (when paper and packaging material are used by the printer) with a Delhi printer, what will be the rate of VAT chargeable by the printer?
 - d. If a customer situated out of Delhi area places an order for printing of books and supplies his own paper to a Delhi printer, what will be the rate of VAT chargeable by the printer?
2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs. 2,000/- paid through D.D. No. 160630 dated 05.01.2011.
3. Sh. Badri Kumar, A.R., who appeared on behalf of the applicant, reiterated the grounds for filing the application.

4. Whether the transaction is a Works Contract or a sale depends on the facts and circumstance of each case, for ready reference, contents of some judgments of various Courts have been summarized for ready reference.

A. In the followings cases, various Courts have held that contract for printing and supply are not contract of sale but works contract:-

I. In the case of State of Tamil Nadu vs. Anandam Viswanathan while deciding the nature of printing of question papers as a work contract, the Hon'ble Supreme Court opined, "Normally, it may be that goods prepared by the assessee which could not be exhibited for sale, would not be decisive of the matter and could in certain circumstances be sales liable to sales tax, but in all circumstances it depends upon the nature of the sale and the nature of the transaction involved. Printing of question papers at the behest of a University or educational institutions is rather a delicate and confidential type of work and the price paid for supplying such printed question papers or printed matters entails primarily the confidence and secondly, the skill and to a very small measure the material".

II. Here it is also pertinent to refer to the judgment of Hon'ble Supreme Court in case of Sarvodaya Printing Press vs. State of Maharashtra wherein the Apex Court has observed as follows:- Printed material was supplied to MPEB in the form of multi-colored triplicate receipt books, specially designed, printed, and prepared as per the specifications of the MPEB. The words "Madhya Pradesh Electricity Board" were printed in various faint colours all over each page of the receipt book as a background, on which the detailed heads of the charges of electricity such as energy bill, surcharges, etc., were printed in black. The charges for the supply were of one composite sum for the entire job. Paper was supplied by the printer. The applicant was obliged to destroy the receipt books in excess of the MPEB's requirements. The transaction was held as a works contract and not a sale contract. Paper and ink used were property of the applicant before printing; thereafter they became the property of the MPEB by theory of accretion. The contract was held as a works contract as the goods were not standard goods and were not capable of any use to any one else and had no commercial value.

III. In the case of Dy. CST vs. Victory Offset Printers, contract for printing and supply of tickets of transport corporation or cinema hall or cinema posters is not a contract of sale but a works contract since printed tickets are not commercially marketable.

IV. In the case of Thomson Press (I) Ltd. vs. State of Haryana printing of lottery tickets was held as work contract since:

- a. The printing of lottery tickets is not the same thing as printing of letterheads or account books, etc.
- b. The end-product is not a commercial commodity and cannot be sold as such to anyone or everyone in the market by the printer.

- c. The printing of lottery tickets involves not only skill and expertise but also confidentiality and security and every printer may not be able to do the job.

4(B). In the followings cases, various courts have taken view that supply of printed material is a sale and not works contract:-

I. In the case of *Saraswati Printing Press vs. CST*, the petitioner press itself purchased the stationery, did printing work upon it according to the order of individual customers, and supplied the printing stationery to its customer. It was held that the press had produced a commercial which was capable of being sold or supplied and that the transaction were not in the nature of works contracts but were sale of goods. The same views were expressed by the Andhra Pradesh High Court in *State of A.P. vs. Sri Krishna Power Press*, where the court further opined that the facts that goods prepare by the assessee could not be exhibited for sale to the general public is not decisive of the issue.

II. In the case of *S.R. P. Works and Ruby Press vs. State of A.P.*, the petitioner, who was running a printing press, supplied cinema tickets and while making out bills, gave break-up figures, showing the cost of paper and the cost of printing separately. It was held that the orders were specially for printing and supply of tickets: that the fact that break-up figures were given in the bills was not decisive or conclusive in determining the question whether there were two contracts-one for supply of paper and the other for printing; and that it was a sale of finished products, i.e. tickets, even if these tickets did not have any other commercial value.

III. In the case of *Bharath Litho Press vs. State of A.P.*, the printer after purchasing the paper printed labels on that paper and supplied to the customer. Held that is was not a works contract but a sale contract.

IV. In the case of *State of Tamil Nadu vs. Anandam Viswanathan*, the Hon'bel Supreme Court also approved the test applied in the case of *P.T. Varghese vs. State of Kerala* where the Kerala High Court held that supply of bill books, vouchers, receipt books, letter-heads and notices were liable to be taxed as finished products.

V. In the case of *Palakkad Dist. Co-op. Printing Press Ltd. vs. State of Kerala*, the printed of accounts books, registers, letter-pads, forms etc. used by bank are printed material.

5. The DR for the revenue stated that in first question all the necessary ingredients of works contracts are present whereas in second question sale of printed material is distinctly discernible.

6. I have perused in detail the application filed u/s 84 of the Act and have heard both the parties. After going through the provisions of the DVAT Act, 2004 and various judgments on the issue, it is observed that in case of printed educational books the printer works upon the contents which are provided by the publisher in the

form of a CD or manual or otherwise. So, the content provided by the contractee (publisher) is the most important factor, which distinguishes whether the transaction is a works contract or a sale contract. Accordingly, answers to the questions raised by the applicant in his application filed u/s 84 of the DVAT Act, 2004 are given as under:-

a(i) The transaction between the publisher and printer is a works contract and not a sale contract so tax is payable under DVAT Act, 2004 on the value at the time of transfer of property in goods (i.e. ink & paper) involved in the execution of the works contract. Therefore, the publishers are liable to pay VAT to the printers who print and supply educational books on their (publishers) behalf as a complete job (with paper used by printers).

a(ii) As per second proviso to section 4(d) the rate of tax payable is @ 5% in respect of the works contract which are in the nature of printing works.

b. If the job is covered under entry no. 52 (i.e. printed material including diary, calendar) appended to the IIIrd Schedule of the DVAT Act the rate of tax payable is @ 5%. In case the job is not covered under the above entry then VAT is payable @ 12.5% being unspecified item.

c. In case a customer situated out of Delhi places an order for complete job with his brand name (when paper and packaging material are used by the printer) with a Delhi printer, the rate of tax will be @ 5% if the job is covered under entry no. 52 (i.e. printed material including diary, calendar) appended to the IIIrd Schedule of the DVAT Act. In case the job is not covered under the above entry then VAT is payable @ 12.5% being unspecified item.

D. In case a customer situated out of Delhi area places an order for printing of books and supplies his own paper to a Delhi printer, the rate of VAT chargeable will be 5% by the printer.

Held accordingly.

(Jalaj Shrivastava)
Commissioner (T&T)

Copy for information and necessary action to:

1. The Applicant.
2. The Addl. Commissioner (L&J), Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
3. The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
4. The Value Added Tax Officer, Policy Branch, Department of Trade & Taxes, Vyapar Bhavan, I.P. Estate, New Delhi.
5. Guard File.

(Jalaj Shrivastava)
Commissioner (T&T)