

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

No: 296/CDVAT/2011/19

Dated: 10.08.2011

Ravinder Dixit

C/o Raj K. Batra, Advocate,
305, Akashdeep Building,
26-A, Barakhamba Road
New Delhi-110001

ORDER

Present for the Applicant : Sh. Raj K. Batra, Advocate

Present for the Department : Sh. T.C. Sharma, DR.

The above named applicant has filed this application on dated 09-06-2011 u/s 84 of the Delhi Value Added Tax Act, 2004 (hereinafter 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:

"Meaning and Interpretation of the word 'costing up to Rs. 10,000/-' mentioned in Entry No. 41 of the Third Schedule of the Delhi Value Added Tax Act, 2004."

2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fee of Rs. 500/- paid through D.D. No. 068834 dated 09.06.2011.

3. Sh. Raj K. Batra, who appeared on behalf of the dealer reiterated the grounds of the application for determination and stated that the Trade is interpreting the words "Mobile Phones and Mobile Phone Accessories costing up to Rs. 10,000/-" differently and all the dealers are confused as to the true and correct meaning of the afore noted expression. The applicant in his application has given several permutations and combinations. He has further stated that the words "costing up to Rs. 10,000/-" used in Entry No. 41 do not indicate whether the 'cost' is in the hands of the seller when he bought the mobile set or is it to the buyer when he purchased the goods.

4. The D.R. on behalf of the Department referred to the definition of "sale price" in section 2(1)(zd)(i) and Explanation given at the end of said definition, which is reproduced below;

(zd) "sale price" means the amount paid or payable as valuable consideration for any sale, including –

(i) the amount of tax, if any, for which the dealer is liable under section 3 of this Act.

(ii) ----- (vii)

Explanation – A dealer's sale price always includes the tax payable by it on making the sale, if any;

So keeping in view the above definition, the "sale price" is the total cost (including tax) in the hands of buyer and not in the hands of seller.

5. Having heard the arguments put forth from both the sides and after perusing the application filed u/s 84 of the Act, the definition of "sale price", I am of the opinion that the '**Value Added Tax**' is a tax on '**sale**' and not on '**purchase**'. The term cost/costing implies in relation to the 'purchaser', in other words it is "sale price" as defined in section 2(1)(zd) of the said Act. Therefore, tax @ 12.5% shall be levied, on the sale of Mobile Phones and Mobile Phone Accessories, if the sale price (including tax) is more than Rs. 10,000/-. Held accordingly.

(Rajendra Kumar)
Commissioner (VAT)

Copy for information and necessary action to:

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

(Rajendra Kumar)
Commissioner (VAT)