

**IN THE COURT OF COMMISSIONER  
DEPARTMENT OF TRADE & TAXES  
GOVERNMENT OF NCT OF DELHI  
VYAPAR BHAWAN: NEW DELHI.**

Subject: - Ruling u/s 85 of DVAT Act, 2004 in respect of advertisement hoardings, panels, display boards, kiosks etc.

VATO (SZ), Department of Trade & Taxes has filed an application u/s 85 of the DVAT Act, 2004, seeking clarification /ruling u/s 85 of the DVAT Act, 2004 on the following two points: -

- a) Whether the advertisement hoardings, panels, display boards, kiosks etc., whether attached to immovable property /earth or not, are goods as defined under the section 2(m) of the DVAT Act, 2004 or not.
- b) If such items are goods, whether the advertisers are liable to pay Value Added Tax on the revenue received on account of deemed sale due to transfer of right to use on these hoarding, panels, display boards, kiosks etc.

The said application has been filed for the purpose of notifying the exact legal position in respect of tax ability on transfer of the right to use in respect of advertisement hoardings, panels, display boards, kiosks etc., both to the authorities subordinate to Commissioner (VAT), Government of NCT of Delhi and the entities /dealers who are carrying on or who may undertake such transactions.

2. While explaining the nature of transactions the applicant in his application dated 04-02-2011 has stated that the agencies who own these sites give these sites to the advertising contractors and they further allow the companies who intent to display their advertisement on rental basis which may be quarterly, fortnightly, monthly etc.

3. It is worthwhile to refer to decision of the Hon'ble West Bengal Tax Tribunal in the case of Selvel Advertising Private Limited Vs. Commercial Tax Officers, Alipore Charge (WBTT) –[1993] 089 STC 0001. Facts of the above mentioned case law are produced herein below for the sake of convenience: -

- Applicant is an advertising agency, which acquires land on lease and then erects structures/hoarding and let out the same for advertising on payment of rent.
- Applicant pays rent for site or premises for the period of lease to the landlords and leases out the right to use the hoarding to different companies for a certain period of time.
- Company possesses the right to use the hoarding structures for advertising their products and pays rent to the applicant.

In the above-mentioned matter, the Bench comprising three Members has delivered separate orders. However, as per the majority view of the Tribunal,

hoardings were to be treated as goods, and letting of such hoarding had to be deemed as a sale (Transfer of Right to Use goods). While arriving at the above conclusion, certain guiding principles were laid down by Members of the Bench, which are as follows: -

- Though the general maxim of the law is that what is annexed to the land becomes part of the land, it is very difficult to say with precision what constitutes an annexation sufficient for the purpose. It is a question, which must depend on the circumstance of each case and mainly on two circumstances, as indicating the intention, the degree of annexation and the object of annexation. The degree of annexation is such that the hoarding or structures can be removed.
- Simply because the structures will be removed sometimes or the other, it does not necessarily become movable property of “goods’ as defined in the BFST Act.
- The principle that there should be delivery of the goods and there should be freedom to use such goods has to be fulfilled to constitute sale. In the instant case the hoarding are let out to the customers, who possess them for the relevant period, and are allowed to be freely used for the purpose of displaying advertisement as per terms of the contract. This principle is, therefore, squarely applicable here and all the ingredients of sale are present.
- If the advertisers are granted an exclusive right to use the hoarding and if no right is reserved to the lessor for interfering with that right, it is case of sale within the meaning of section 2(g) (ii).
- Here also, it should be determined whether the applicant also renders certain services together with allowing the use of the hoarding, this can be ascertained from the terms of the contract between the applicant on the one hand and its customers on the other. If it is upon scrutiny that there is such a transfer of right to use any “goods” without any scope for interference by the lessor and without any services rendered, only then charges recovered for the same may be exigible to tax.

4. It is relevant here to mention to the decision of the Hon’ble Tribunal of Tamil Nadu in the case of Upasana Finance Ltd. Vs. State of Tamil Nadu and Another (and other cases) (TNTST)—[1999] 113 STC 0403. Brief facts of the aforementioned case are as follow: -

\* Applicant is an advertising agency, which erects hoarding and lets the same on hire for display of advertisement.

\* Hon’ble Tribunal in the above cited order, held that the hoarding should be treated as ‘goods’ and when let out for display of advertisement, there is a deemed sale (transfer of right to use goods).

\* Hon’ble Tribunal relied upon the following principle while arriving on the conclusion that the hoarding when let out for advertising would be deemed as sale;

\* The hire charges, which a person collects for the transfer of right to use hoarding, are not subject to a Services Tax on advertisement.

\* On facts it has to be found whether a person who erects the hoardings only lets on hire the hoardings for display of advertisement or whether he also undertakes the job of designing the advertisement and painting the hoardings. Even here the two transactions are clearly separable. For hire charges of the hoardings, the person who erects is certainly liable to be taxed under section 3-A (transfer of right to use). This will depend upon facts of each case. The question of possession by the person who erects the hoardings is of no relevance.

\* In the case of transfer of right to use, the essence of transfer is the passage of control over the economic benefit of the property. In as much as the transfer of right to use the goods is a deemed sale, the rent paid for the use of goods can certainly be the basis for the levy of tax.

5. It is also worthwhile to refer to the definition of the term “**goods**” as defined in section 2(1)(m) of the DVAT Act, which reads as under: -

(m) “**goods**” means every kind of moveable property (other than newspapers, actionable claims, stocks, shares and securities) and includes –

- i livestock, all materials, commodities, grass or things attached to or forming part of the earth which are agreed to be severed before sale or under a contract of sale, and
- ii property in goods (whether as goods or in some other form) involved in the execution of a works contract, lease or hire-purchase or those to be used in the fitting out, improvement or repair of movable property”

Here, it is equally relevant to refer to the definition of the “sale” as contained in section 2(1)(zc) of DVAT Act, 2004, which reads as follows :

2(1)(zc) “**sale**” with its grammatical variations and cognate expression means any transfer of property in goods by one person to another for cash or for deferred payment or for other valuable consideration (not including a grant or subvention payment made by one government agency or department, whether of the central government or of any state government, to another) and includes –

vi. transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration ;

6. After careful examination of the nature of the transactions of sale and purchase as explained in the application filed by the VATO (Special zone), keeping in view the provisions of DVAT Act, 2004 referred to above, the law laid down by the Hon'ble Tribunals of West Bengal and Tamil Nadu on the said matter and the sale/purchase transactions related thereto, the ruling on the

questions raised by the applicant in his application filed u/s 85 of the DVAT Act, 2004 is given as follows: -

- a) The advertisement hoardings, panels, display boards, kiosks etc., whether attached to immovable property /earth or not, are goods as defined under section 2(m) of the DVAT Act, 2004.
- b) The advertisers are liable to pay Value Added Tax on the revenue received on account of deemed sale due to transfer of right to use of these hoarding, panels, display boards, kiosks etc.

This ruling shall come into force from retrospective effect i.e. with effect from 1-04-2005.

**(Jalaj Shrivastava)**  
**Commissioner (T&T)**

Addl. Commissioner (Legal)  
T&T Department, Vyapar Bhawan,  
I.P. Estate, New Delhi.

No. : 287/CDVAT/2011/04

Dated : 06.04.2011

Copy for information and necessary action to: -

- 1 The Secretary (GAD) – with the request to get the ruling published in the official gazette urgently.
- 2 All Addl. Commissioners, Department of Trade & Taxes, Vyapar Bhawan, I.P. Estate, New Delhi.
- 3 All Joint Commissioners/Dy. Commissioners, Department of Trade & Taxes, Vyapar Bhawan, I.P. Estate, New Delhi through VATO (Policy)
- 4 The President, Sales Tax Bar Association, Department of Trade & Taxes, Vyapar Bhawan, I.P. Estate, New Delhi.
- 5 The Value Added Tax Officer, Policy Branch, Department of Trade & Taxes, Vyapar Bhawan, I.P. Estate, New Delhi.
- 6 Guard File.

**(Jalaj Shrivastava)**  
**Commissioner (T&T)**