

CHAPTER I

Preliminary

1 Short title, extent and commencement

- (1) This Act may be called the Delhi Value Added Tax Act, 2004.
- (2) It extends to the whole of the National Capital Territory of Delhi.
- (3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint:

PROVIDED that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2 Definitions

- (1) In this Act, unless the context otherwise requires, -
 - (a) **“accountant”** means –
 - (i) a chartered accountant within the meaning of the Chartered Accountant’s Act, 1949 (Act 38 of 1949);
 - (ii) a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered; or
 - ¹[(iii) a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or]
 - ²[(iv)] a person referred to in section 619 of the Companies Act, 1956 (1 of 1956);
 - (b) **“adequate proof”** means such documents, testimony or other evidence as may be prescribed;
 - (c) **“Appellate Tribunal”** means the Appellate Tribunal constituted under section 73 of this Act;
 - (d) **“business”** includes -
 - ³[(i) the provision of any services, but excluding the services provided by an employee;]
 - (ii) any trade, commerce or manufacture;
 - (iii) any adventure or concern in the nature of trade, commerce or manufacture;
 - (iv) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern; and
 - (v) any occasional transaction in the nature of such service, trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction;
- whether or not such service, trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern;

¹ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

² Re-lettered from “(iii)” to “(iv)” vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

³ Substituted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

Explanation.- For the purpose of this clause –

(i) any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be business;

(ii) purchase of any goods, the price of which is debited to the business and sale of any goods, the proceeds of which are credited to the business shall be deemed to be business;

(e) “**business premises**” means -

(i) the address of a dealer, registered with the Commissioner; and

(ii) any building or place used by a person for the conduct of his business, except for those parts of the building or place used principally as a residence;

⁴[(f) “**capital goods**” means plant, machinery and equipment used, directly or indirectly, in the process of trade or manufacturing or for execution of works contract in Delhi;]

(g) “**casual trader**” means a person who, whether as principal, agent or in any other capacity undertakes occasional transactions in the nature of business involving buying, selling, supply or distribution of goods or conducting any exhibition-cum-sale in Delhi whether for cash, deferred payment, commission, remuneration or other valuable consideration;

(h) “**Commissioner**” means the Commissioner of Value Added Tax appointed under sub-section (1) of section 66 of this Act;

(i) “**in the course of**” includes activities done for the purposes of, in connection with, or incidental to and activities done as part of the preparation for the activity and in the termination of, the activity;

⁵[(j) “**dealer**” means any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business, buys or sells goods in Delhi directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes, -

(i) a factor, commission agent, broker, *del credere* agent or any other mercantile agent by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells or supplies or distributes any goods on behalf of any principal or principals whether disclosed or not ;

(ii) a non-resident dealer or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in Delhi for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business;

(iii) a local branch of a firm or company or association of persons, outside Delhi where such firm company, association of persons is a dealer under any other sub-clause of this definition;

(iv) a club, association, society, trust, or cooperative society, whether incorporated or unincorporated, which buys goods from or sells goods to its members for price, fee or subscription, whether or not in the course of business;

(v) an auctioneer, who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the

⁴ Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f.16.11.2005.

⁵ Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f.16.11.2005.

principal;

(vi) a casual trader ;

(vii) any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.

Explanation.- For the purposes of this clause, each of the following persons, bodies and entities who sells any goods whether in the course of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:-

(i) Customs Department of Government of India administering Customs Act, 1962 (52 of 1962);

(ii) Departments of Union Government, State Governments and Union territory Administrations;

(iii) Local authorities, Panchayats, Municipalities, Development Authorities, Cantonment Boards;

(iv) Public Charitable Trusts;

(v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail Corporation Limited;

(vi) Incorporated or unincorporated societies, clubs or other associations of persons;

(vii) Each autonomous or statutory body or corporation or company or society or any industrial, commercial, banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;

(viii) Delhi Transport Corporation;

(ix) Shipping and construction companies, air transport companies, airlines and advertising agencies.]

(k) **“Delhi”** means the National Capital Territory of Delhi;

(l) **“fair market value”** means the value at which goods of like kind and quality are sold or would be sold in the same quantities between unrelated parties in the open market in Delhi;

(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;

(n) **“goods vehicle”** means a motor vehicle, vessel, boat, animal and any other form of conveyance used for carrying goods;

(o) **“Government”** means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under article 239 and designated as such under article 239AA of the Constitution;

(p) **“import of goods into Delhi”** means taking, receiving, bringing, carrying, transporting, or causing to bring or receive goods into Delhi from any place outside Delhi;

Explanation.- In the case of goods arriving in Delhi from a foreign country through Customs, the “import of the goods in Delhi” occurs at the place where the goods are cleared by

Customs for home consumption;

(q) **“importer”** means -

- (i) a person who brings his own goods into Delhi; or
- (ii) a person on whose behalf another person brings goods into Delhi; or
- (iii) in the case of a sale occurring in the circumstances referred to in sub-section 2 of section 6 of the Central Sales Tax Act, 1956 (74 of 1956), the person in Delhi to whom the goods are delivered;

(r) **“input tax”** in relation to the purchase of goods, means the proportion of the price paid by the buyer for the goods which represents tax for which the selling dealer is liable under this Act;

⁶[(ra) **“manufacture”** with its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;]

(s) **“net tax”** means the amount calculated for a tax period under section 11 of this Act;

(t) **“non-creditable goods”** means the goods listed in the Seventh Schedule;

(v) **“non-resident”** means a person who has no fixed place of business or residence in Delhi;

(w) **“notified”** means notified by the Commissioner in the official Gazette;

(x) **“official Gazette”** means the Delhi Gazette;

(y) **“prescribed”** means prescribed by rules made under this Act;

(z) **“registered dealer”** means a dealer registered under this Act;

(za) a person is **“related”** to another person (referred to in this definition as a “dealer”) if the person -

(i) is a relative of the dealer;

(ii) is a partnership of which the dealer is a partner;

(iii) is a company in which the dealer (either alone or in conjunction with another person who is, or persons who are, related to the dealer under another sub-clause of this clause) directly or indirectly holds forty per cent or more of outstanding voting stock or shares;

(iv) is a person who (either alone or in conjunction with another person who is, or other persons who are, related to the person under another sub-clause of this clause) directly or indirectly owns forty per cent or more of outstanding voting stock or shares of the dealer;

(v) is a company in which forty per cent or more of outstanding voting stock is held directly or indirectly by a person (either alone or in conjunction with another person who is, or other persons who are, related to the person under another sub-clause of this clause) who also holds forty per cent or more of the outstanding voting stock or shares of the dealer; or

(vi) is controlled by the dealer, a person whom the dealer controls, or is a person who is controlled by the same person who controls the dealer;

(zb) **“relative”** means a relative as defined in clause 41 of section 2 of the Companies Act, 1956 (1 of 1956);

(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

⁶ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

includes-

(i) a transfer of goods on hire purchase or other system of payment by installments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

(ii) supply of goods by a society (including a co-operative society), club, firm, or any association to its members for cash or for deferred payment or for commission, remuneration or other valuable consideration, whether or not in the course of business;

(iii) transfer of property in goods by an auctioneer referred to in sub-clause (vii) of clause (j) of this section, or sale of goods in the course of any other activity in the nature of banking, insurance who in the course of their main activity also sell goods repossessed or re-claimed;

(iv) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(v) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(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;

(vii) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

(viii) every disposal of goods referred to in sub-clause (ix) of clause (j) of this section

and the words “sell”, “buy” and “purchase” wherever appearing with all their grammatical variations and cognate expressions, shall be construed accordingly;

(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) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;

(iii) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;

(iv) any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;

(v) amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and

(vi) amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;

(vii) in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract;

less -

(a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;

(b) the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;

and the words “purchase price” with all their grammatical variations and cognate expressions, shall be construed accordingly;

Explanation.- A dealer’s sale price always includes the tax payable by it on making the sale, if any;

(ze) “**Schedule**” means a Schedule appended to this Act;

(zf) “**tax**” means tax payable under this Act;

(zg) “**taxable quantum**” means the amount defined in sub-section (2) of section 18 of this Act;

(zh) “**tax invoice**” means the document defined in section 50 of this Act;

(zi) “**tax period**” means the period prescribed in the rules made under this Act;

(zj) “**tax fraction**” means the fraction calculated in accordance with formula,

$$r / (r+100)$$

where ‘r’ is the percentage rate of tax applicable to the sale under this Act;

(zk) “**transporter**” means any person who, for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, and includes any person whose business consists of or includes operating a railway, shipping company, air cargo terminal, inland container depot, container freight station, courier service or airline;

(zl) “**turnover of purchases**” means the aggregate of the amounts of purchase price paid or payable by a person in any tax period, including any input tax;

(zm) “**turnover**” means the aggregate of the amounts of sale price received or receivable by the person in any tax period, reduced by any tax for which the person is liable under section 3 of this Act;

(zn) “**value of goods**” means the fair market value of the goods at that time including insurance charges, excise duties, countervailing duties, tax paid or payable under the Central Sales Tax Act, 1956 (74 of 1956) in respect of the sale, transport charges, freight charges and all other charges incidental to the transaction of the goods;

(zo) “**works contract**” includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;

(zp) “**year**” means the financial year from the first day of April to the last day of March;

(2) Unless otherwise specified in this Act-

(a) words importing the masculine gender shall include the feminine gender;

(b) words in singular shall include their plural and vice versa;

(c) expressions referring to “writing” shall include printing, typing, lithography, photography and other methods of representing or reproducing words in a visible form; and

(d) with reference to a person who is unable to sign his name, the words “signature” shall include his thumb impression or other mark duly attested to signify his signature.