STA to circulate to all AAs

DETC
2/24/4/14

From

Excise & Taxation Commissioner,
Haryana, Panchkula.

To

1. All the Joint Excise & Taxation Commissioners (Range),
2. All the Deputy Excise & Taxation Commissioners (ST),
3. All the Deputy Excise & Taxation Commissioners (PGT),
In the State.

Memo No. 0644 /ST-1
Dated: 21.4.2014

Subject: **Item No.2 regarding major decisions taken in the review meeting of the DETCs (ST) held on 20.3.2014.**

Memo

As decided in Para 2 of the above referred meeting, in regard to the charging of vat by the restaurants after including service tax in the sales amount it is brought to your notice that a clarification was issued by the Principal Secretary to the Government of Haryana, Excise & Taxation Department to M/s. Redington India Limited, Panchkula vide order dated 20.8.2013 which was circulated vide this office memo No.1807/ST-1 dated 22.8.2013 and is also available on the department website under the head "Clarifications". You are advised to bring this to the notice and also circulate a copy of the same to all the officers working your control for necessary compliance and implementation immediately. A copy of the clarification is again enclosed herewith for your ready reference.

Addl. Excise & Taxation Commissioner (P/R),
For Excise & Taxation Commissioner, Haryana

Endst. No. 645 /ST-1 Dated: 21.4.2014

A copy alongwith a copy of the clarification is forwarded to the following for their information:

1. PS to the ETM for information of the Hon'ble Excise & Taxation Minister.
2. The Additional Chief Secretary to Government of Haryana, Excise & Taxation Department, Chandigarh.
3. All the Additional/Joint/Deputy Excise & Taxation Commissioners posted in the Head Office.
4. The Deputy Secretary to Government Haryana, Monitoring & Coordination Cell, O/o the Chief Secretary to Govt. Haryana, Haryana Civil Secretariat Chandigarh w.r.t. his office memo No.3/3/2001-MC dated 20.12.2012.
5. PS to ETC for information of the Excise & Taxation Commissioner, Haryana.

Addl. Excise & Taxation Commissioner (P/R),
For Excise & Taxation Commissioner, Haryana

Forward to all the ETOs cum AAs in Panipat Distt for information & n. action

DETC (ST) Panipat
24/4/14

ORDER OF CLARIFICATION MADE BY SHRI HARDEEP KUMAR, IAS, PRINCIPAL SECRETARY TO GOVERNMENT OF HARYANA, EXCISE & TAXATION DEPARTMENT, Under Section 56(3) of the Haryana Value Added Tax Act, 2003 To M/s. Redington India Limited, Panchkula

M/s Redington India Limited, 150 Industrial Area Phase II, Panchkula (TIN- 06212501615) (here-in-after referred to as the applicant) has sought a clarification under Section 56 (3) of the Haryana Value Added Tax Act, 2003 (the Act) on the issue i.e. ***"Whether VAT is applicable on the basic price of software/software license plus service tax or only on basic price of software/software license?"***

2. As per the statement of facts the applicant dealer is a distributor of IT and non IT products including software and software licenses. The applicant has to pay vat as well as service tax on sale of software licenses. As per the understanding and interpretation of the law by the applicant, the applicant is presently paying VAT on the basic price of software as well as on the element of service tax chargeable on the software license. Though the applicant has been paying VAT on the element of service tax as well yet it is contended that the service tax is not includible in the sale price because of the two counts:-

a) The definition of the sale price under the Act covers the amount of consideration paid for sale of goods and service tax being a separate levy by the Central Government cannot be termed as consideration or value of the sale.

b) Sale price includes any sum charged for anything done by the dealer in respect of the goods and service tax component is not a sum charged by the dealer for anything done on the goods but a statutory levy under the central legislation.

Reliance in his support that the service tax is not the part of the sale price has also been taken from a clarification issued by the Department of Trade and Taxes, Govt of Delhi.

3. The matter has been examined. The definition of sale price as contained in section 2(zg) of the HVAT Act 2003 which has relevance in the case, is reproduced as under:-

> **"Sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any such sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression "purchase price" shall be construed accordingly;"**

4. Perusal of the definition of the sale price clearly stipulates that the amount payable to a dealer as consideration for the sale of any goods is the sale price of those goods. Here the concept of real price or price retainable by the dealer is irrelevant. The test is what consideration is passing from the purchaser to the dealer for the sale of goods. The liability to pay the service tax is of the service provider, who is the applicant in the present case. Admittedly the software/software licenses are goods and the consideration received against the sales of these goods includes the basic price, service tax and VAT. But the co-joint reading of definition of "sale price" and the "gross turnover" makes clear that the VAT charged under the Act would not form part of the sale

price. Since the liability to pay service charges is of the applicant and the applicant has received service tax from the purchaser as considerations for sale and hence the service tax would be the part of the sale price and VAT is applicable on the basic price of software/software license plus Service Tax.

5. Regarding the clarification issued by the Commissioner (Trade & Taxes), Delhi in similar circumstances it is suffice to say that the definition of "sale price" under the Delhi VAT Act is restricted to include only the amount of the duties levied or duties leviable on the goods under the Central Excise Act, 1944 or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 whether such duties are payable by the seller or any other person. Obviously the levies under the above referred Acts only are liable to be included in the "sale price" but the levy under the Service Tax Act has not been mentioned there so the same would not be included in the sales price as far as the Delhi VAT Act is concerned. But there is no such restriction under the definition of the "sales price" under the Haryana Act, so the clarification issued by Delhi authorities is not relevant under the Haryana Act.

6. Therefore, in the light of the above it is clarified that the VAT is applicable on the service tax element also.

(HARDEEP KUMAR)
Principal Secretary to Government of Haryana
Excise & Taxation Department

Dated: 20.8.2013
Chandigarh