SALES TAX OFFICER (C-006)
3rd Floor, Sai Vihar, Above Hotel Gurudev,
Shivaji Chowk, Kalyan.
Tel. : 0251-2220347

To,

M/s Maa Jalpa Trade Agencies

241/B-2, Kasturi Plaza

Manpada Road, Dombivli(East)

No STO(C-006)/Assessment/Misc/2017-18/B- 828 Mumbai Dt 13-12-2017

Sub : Proposal for enhancement of amount tax payable on sales of Mobile Handsets and Modems effected during 2011-12 as per provisions of sec 57 of the MVAT Act 2002.

Gentleman

You are being assessed for the period from 01-04-2011 to 31-03-2012 under the MVAT Act 2002. During the course of assessment, it is noticed that the Mobile Handsets and Modems purchased from M/s Drive India Enterprises Solution Ltd have been sold at much lower than the purchase price. As per the Audit report in Form-704, the gross purchase price of mobile handsets is shown at Rs 94,19,506/- (Net) plus Rs 11,77,439/- (Tax), whereas the corresponding sales have been shown at Rs 54,56,878/- (Net) plus Rs 6,82,110/- (Tax). Similarly Modem are also sold at lower sale price than that of actual purchase price. On enquiry, you have stated that there was an understanding between you and the Tata Tele Services (Maharashtra) Ltd (TTML) that in order to compensate the loss on the sales of Mobile Handsets and Modems, it will subsidy/discount on the purchases of Recharge Vouchers, which are tax free.

Thus, it is noticed that, during the year 2011-12 M/s TTML has provided you subsidy/discount to the extent of Rs 50,62,142/- on the purchases of Recharge Vouchers which are tax free, which enabled you to pass the benefit to the extent of Rs 50,62,142/- on the sales of Mobile handsets and Modems taxable @ 12.5% and 5% respectively.

However, due to this understanding/arrangement, the purpose of the MVAT Act 2002, to collect tax on value addition of goods is defeated. This has resulted in reduction of tax liability on the sales of Mobile handsets and modems. In view of this, the provisions of section 57 of the MVAT Act are attracted which are as follows :-

......"If the Commissioner is satisfied that an arrangement has been entered into between two or more dealers to defeat the application or purpose of this Act or any provision of this Act, then the Commissioner may by order declare the arrangement to be null void .... He may, provide for increase /decrease the amount of tax payable by dealer who is affected by the arrangement.......in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by the dealer under the arrangement.

......."For the purpose of this section:- " arrangement" includes any contract, agreement, plan or understanding.. and all steps and transactions by which the arrangement is sought to be carried out.

.... "tax advantage" includes ... (a)any reduction in the liability of any dealer to pay tax....
(b) any increase in ..claim of set-off or refund....(c) any reduction in in the sale price or purchase price receivable or payable by any dealer...

12/1/2018

In view of this, it is proposed to enhance the tax liability as per the provisions of Section 57 of this Act. You are, therefore , requested to attend before me on ~~21-12-2017~~ at above address at 11.00 am and explain as to why the tax liability on the sales of Mobile handsets and Modems should not be enhanced by increasing the Turnover of sales of these commodities.

Please note that if you fail to attend on the appointed date without any sufficient cause, it will be presumed that you have no objection for the proposed enhancement of tax and order will be passed without giving you any further opportunity.

VARDHAMAN PATIL
Sales Tax Officer (C-006)
Kalyan.