

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

No.367/CDVAT/2014/ 299

Dated: 30/09/2014

M/s. Jagdeep & Associates (Legal Firm),
A-36, Rajouri Garden,
New Delhi - 110036.

ORDER

Present for the Applicant : Sh. A.K.Batra, CA
Present for the Department : Sh. M.K.Aggarwal, Departmental
Representative

The above named applicant filed an application on 10/06/2014 under section 84 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as the "said Act") and the question put up for determination under the aforesaid provision of law is as under: -

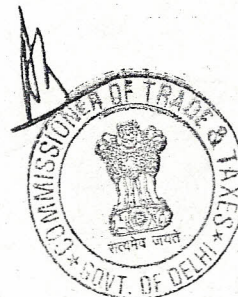
"Whether sale of Microphones shall be subject to levy of VAT at 5% under Schedule III of the DVAT Act or at 12.5% under the Residual Entry?"

2. The application has been filed by M/s. Jagdeep & Associates (Legal Firm) in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid vide DD No. 920883 dated 04.06.2014 drawn on Kotak Mahindra Bank, Vishal Enclave, Delhi.
3. Sh. A.K. Batra, C.A appeared on behalf of M/s. Jagdeep & Associates (Legal Firm) and reiterated the facts and grounds of the case and requested to determine the rate of tax payable on sale of Microphones.

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07/10/14



4. The brief facts of the case, as explained by the applicant are as under:-
- i) One of the clients of the applicant proposes to start the business of trading of Microphones which can be used in computers, computer peripherals, for speech and sound amplifiers and other allied products. The usage of these Microphones by the end consumer, at the time of its sale, will not be known.
 - ii) Earlier a similar question was raised by M/s Audio Centre for determination. It was put up before the court "Is rate of VAT applicable on the sale of Microphones is 4%". Vide Determination No.127/CDVAT/2006 dated 08.08.2006 passed in the name of Audio Centre it has been determined that such Microphones which are used for Public Address System will not get covered under Schedule III of the DVAT Act but under the residuary entry and will be charged @ 12.5%.
 - iii) It was held that the Public Address Microphones are general unspecified goods and would attract tax at the rate of 12.5% in view of the Section 4(1)(e) of the DVAT Act, 2004.
 - iv) Applicant further stated that similar issues have been examined by various courts wherein they held that a residuary entry is meant only for those categories of goods which fall outside the ambit of specified entries, meaning thereby that when a particular item has been specified in the Schedule it will attract the rate of tax specified in that schedule and in the instant case Microphones are mentioned in entry 41(A)(10) of Third Schedule of the DVAT Act, 2004.



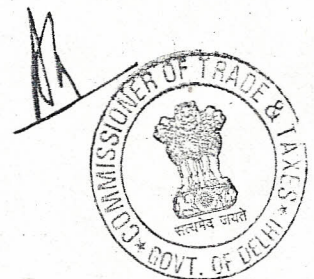
- v) Applicant further stated that 'Microphone' is a genus and the 'one used in products such as Computers, Mobile Phones etc.', are the species to it. Genus includes the species of it. Therefore, Microphone includes all type of microphones. In the instant case, microphone is used in the computers and IT products and thus, is very well covered in the genus of the word 'Microphone'.

With the above averments, he stated that Microphones which are specified under Schedule III of the DVAT Act attract 5% VAT, whether the same are used in IT Products or for Public Address Systems and other allied products.

5. The DR, on the other hand, argued that entry 41A of the Schedule III of DVAT Act, 2004, reads as under:

Sl. No.	COMMODITY
41A	Information Technology products -
10	Microphones, multimedia speakers, headphones, earphones and combined microphones/ speaker sets and their parts.

The entry of Microphones is not an independent entry but the scope of the entry is restricted to the extent of the Microphones used in IT products. The intent of the legislature is to include those microphones which are minute and can be attached to the computers. The microphones which are used in auditorium, public gatherings or theatres for addressing public meeting, concerts etc. are not covered in the entry. The genus in the instant case is IT products and its species is Microphone. The scope of the entry do not cover Microphone in a general sense but it should be read in the limited sense in which it is mentioned. Further, the issue has already been decided by the Commissioner, VAT in the order dated 08.08.2006.



6. I have heard both the sides and gone through the documents available on record and I am of the opinion that the intent of the legislature is to include only those Microphones which are used as IT products and not to include those microphones which are used in auditorium, public gatherings or theatres for addressing public meeting, concerts etc. and those are covered under section 4(1)(e) of the Delhi Value Added Tax Act, 2004 and attract tax @ 12.5%
7. Held accordingly.

(Sanjeev Khirwar)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Programmer (EDP) for uploading this order on web.
5. Value Added Tax Officer (Policy Branch)
6. President, Sales Tax Bar Association (Regd.)
7. Guard File

(Sanjeev Khirwar)
Commissioner, VAT

