

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

No.343/CDVAT/2013/214

Dated: 29.11.2013

M/s. Autometers Alliance Ltd.,
454, FIE, Patparganj Indl. Area,
Delhi-110092.


ORDER

Present for the Applicant : Sh. Mukesh Gupta, Jr. Manager
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

The above named applicant filed an application on 10/10/2013 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: -

"The company has entered into agreement with Delhi Integrated Multi Model Transit Systems Ltd. For supply and installation of LED Display Board at Bus-Q-Shelters for 60 months @ Rs.1358/- per Bus-Q-Shelter, per month excluding Service Tax & VAT as applicable, Rs.1358/- includes the cost and maintenance charges of display board. After 60 months the same will be transferred to Transport Department on free of cost. LED Display Board value for the purpose of working out the buy-out price shall be Rs.494/- per month exclusive of taxes as applicable, if agreement terminate before expiry of 5 years the Delhi Integrated Multi Model Transit Systems Ltd. has option to buy the Display Boards @ Rs.494/- per month for remaining period.


In the above transaction, the company wants to know applicability of VAT under Delhi Value Added Tax Act, 2004, on monthly invoice."





2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through demand draft No. 247890 dated 08.10.2013 of ICICI Bank.
3. M/s. Autometers Alliance Limited, is a registered dealer having TIN 07310205699. The company has entered into an agreement with DIMTS for supply, installation and maintenance of LED Display Board at Bus-Q-Shelters. Sh. Mukesh Gupta, Jr. Manager of the Company appeared and reiterated the grounds of the determination application.
4. The DR appearing on behalf of the department stated that the Act defines 'sale', with all its grammatical variations and cognate expressions mean 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 -
 - (i) -
 - (ii) -
 - (iii) -
 - (iv) -
 - (v) transfer of property in goods (whether as goods or in some other form) involved in the execution of 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;

" 'goods', means every kind of movable property (other than newspapers, actionable claims, stocks, shares and securities) and includes -





- (i) live stock, 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; ”

In the case of BSNL Vs. UOI [2006] 3 STT 245 Hon'ble Supreme Court held that to constitute the transaction for the transfer of the right to use the goods, the transaction must have the following attributes:-

- i. There must be goods available for delivery;
- ii. There must be a consensus *ad idem* as to the identity of the goods;
- iii. The transferee should have a legal right to use the goods and, consequently, all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee;
- iv. For the period during which the transferee has such legal right, it has to be the exclusion of the transferor : this is the necessary concomitant or the plain language of the statute, viz., a “transfer of the right to use” and not merely a license to use the goods:
- v. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

Accordingly, the case under consideration, the amount of Rs. 494/- per LED Display Board per Bus-Q-Shelter per month shall be deemed sales covered under section 2(1)(zc)(vi) of the Act on account of Right to Use basis. Further, the balance amount of Rs. 864/- is on account of works contract of composite nature and as per rule 3 of DVAT Rules, 2005, the dealer is entitled to claim exemption @ 20% and balance 80% shall be taxable sale. Further, on the work contract component of Rs. 864/-, DIMTS was also required to deduct TDS @ 2% up to 15.01.2013 and @ 4% from 16.01.2013.




The Departmental Representative also pointed out that in the copy of bills submitted by the applicant Cenvat has been reduced from the taxable amount but for the purpose of VAT, the entire amount of Rs.1358/- is to be considered in the manner explained above.

5. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and heard both the parties. On going through the agreement between the applicant and DIMTS, it is revealed that the applicant shall receive payment for supply, installation and maintenance of LED Display Board @ Rs.1358/- per Bus-Q-Shelter per month excluding Service Tax and VAT. Out of this amount, an amount @ Rs.494/- per LED Display Board per Bus-Q-Shelter per month shall be deemed sales covered under section 2(1)(zc)(vi) of the Act on account of 'Right to Use' basis and subject to VAT accordingly. The balance amount @ Rs. 864/- per LED Display Board per Bus-Q-Shelter per month shall be sale covered under section 2(1)(zc)(v) of the Act being deemed sales for execution of Works Contract relating to maintenance of LED Display Board and TDS thereon shall be deductible as per provisions of law. The dealer shall be entitled to claim exemption of Rs.172.80/- from Rs. 864/-, on account of labour charges @ 20% as per table provided under Rule 3 of the DVAT Rules, as the dealer is not maintaining separate Books of Accounts. Held accordingly.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Addl. Commissioner (System)
4. Value Added Tax Officer (Policy Branch)
5. President, Sales Tax Bar Association (Regd.)
6. Guard File

(Prashant Goyal)
Commissioner, VAT