

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

No.358/CDVAT/2013/250

Dated: 10.03.2014

M/s. Queen Distillers & Bottlers Pvt. Limited,
6/6, DLF Tower-A, Plot No.10,
District Centre, Jasola,
New Delhi-110025.

Ref no 4902/303/40005
13/3/14

ORDER

Present for the Applicant : Sh. Santanu Kanungo, Counsel
Present for the Department : Sh. T.C. Sharma, Departmental Representative

The above named applicant filed an application on 27.11.2013 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 :-

"Whether the Excise Duty amount as levied by the Applicant Dealer is liable to be reduced or adjusted and the actual sale should be reflected in DVAT-16 and tax paid against excise duty may be adjusted in any other column?"

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through demand draft No.206133 dated 22.11.2013 of ICICI Bank, Jasola Vihar, New Delhi.
3. The applicant is a private limited company and is dealing with Indian Made foreign Liquor ('IMFL' in short) and is registered with the department having TIN no. 07440242051.
4. The brief facts of the case are that the applicant received the circular/letter no.788-797 dated 06.07.2012, from the Excise Department, Govt. of NCT of Delhi, vide the said circular/letter the Competent Authority has approved the price structure of Indian made Foreign Liquor, Delhi Medium Liquor ('IMFL' & 'DML' in short).

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The competent Authority instructed the Applicant and other dealers with the same modus operandi to levy VAT on the Excise Duty payable to the Govt. of NCT of Delhi.

The Excise Duties as levied on the IMFL & DML are being deposited by the Corporations under the Govt. of NCT of Delhi, like DSIDC, DSCSC etc. Now as per that circular no. 788-797, the Applicant will levy VAT on the combined amount of the liquor value and the excise amount, though the same excise amount will neither be deposited by them nor they can be treated our sale because the excise amount would be reduced in the Tax Invoice raised by us to the Corporations. The said circular was implemented with effect from 16.06.2013. Presently at the time of the filing of their quarterly return they have to enter the total amount, which is inclusive of the excise duty as levied under the Delhi Excise Act, 2009, as sale in the Form 16 to match the tax amount collected from the Delhi Govt's Corporations but their sale amount as per their Books of Accounts and as per Audited Balance Sheet will not be tallied with the same, and it may create some confusion as the sale of the Applicant will be inflated also with said excise amount and neither Corporations would pay or reimburse any amount to us against the said duty amount as it was deposited by those corporations only. The applicant has levied the excise amount in it's Tax Invoice to determine the actual VAT liability. The confusion has been created because the Excise amount which is levied by Applicant in it's Tax Invoice but deposited by the Corporations only in the other hand the VAT collected on the said Excise duty has been deposited by the Applicant only.

In case the Applicant shows the actual sale in the Form-16 of the DVAT Return then the output tax liability is not tallying with the tax paid amount as the tax paid against the excise duty is showing as surplus amount and the same will be automatically carried forward to the next tax period, which is also erroneous. The applicant also submits that as on date there is no scope to adjust the excess VAT paid on account of Excise duty against an adjustment to be made under section 8 of the DVAT Act.



2. The Departmental Representative referred to the various statutory provisions according to which the applicant is liable to pay Excise Duty on alcoholic liquor, which are as under:

a. The Constitution of India, Seventh Schedule, List-II-State List, entry no.51, by which the state is empowered to collect excise duty, which reads as under:

“51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

(a) Alcoholic liquors for human consumption;

(b) Opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.”

b. The relevant provisions of Delhi Excise Rules, 2010, according to which the dealer is liable to pay excise duty before its transportation, are as under:-

“ 9. Payment of duty and fee on import, export and transport of liquor.- (1) No liquor on which the prescribed rate of duty and fee have not been paid or a bond has been executed in lieu thereof, may be imported, exported or transported.

(2) Excise Commissioner may allow re-export of Indian Liquor and Country Liquor without payment of duty in special cases for reasons to be recorded.

10. Grant of pass and permit.- (1) The licensee shall apply for the issue of transport pass and the same shall be issued in such form and manner as may be prescribed or as specified by the Excise Commissioner from time to time. Each application shall be accompanied by a receipted treasury challan showing the deposit of duty and fee, payable on the quantity of liquor for which transport pass is required, unless duty and fee have been paid at the time of import.”

“6. Pass mandatory for import, export or transport of liquor.- No liquor shall be imported, exported or transported, except under a pass issued in accordance with the rules for the time being in force for such import, export and transport.”

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c. The relevant provision of DVAT Act, 2004, which makes the dealer liable for payment of VAT on sales price which includes the excise duty under the Delhi Excise Act, 2009 irrespective of the fact whether such duties are payable by the seller or any other person, the definition of sale price under DVAT Act is as under:

“ 2(1)(zd) **“sale price”** means the amount paid or payable as valuable consideration for any sale, including-

(i)

(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 Delhi Excise Act, 2009 (Delhi Act 10 of 2010) whether such duties are payable by the seller or any other person; and

(vi)

(vii) ”

In view of the above provisions of the Constitution of India, the Government of NCT of Delhi is empowered to collect Excise on alcoholic liquor. The Government of NCT vide the Delhi Excise Act, 2009 (Delhi Act 10 of 2010) and the Delhi Excise Rules, 2010, has issued the license to various types of dealers and has laid down the procedure for collection of excise duty.

The G.M., Excise Department, vide letter dated 06.07.2012 has conveyed the price structure of the liquor sold by the dealer for the period 2013-14 and according to which the dealer is liable to pay weighted average price. As per the provisions of Delhi Excise Rules, 2010, no liquor shall be sold without payment of duty prescribed rate of duty and fees and no liquor shall be imported, exported or transported, except under a pass issued in accordance with the rules. Further, the licensee shall apply for the issue of transport pass and the same shall be issued in such form and manner as may be prescribed Each application shall be accompanied by a receipted treasury challan showing the deposit of duty and fee, payable on the quantity of liquor for which transport pass is required, unless duty and fee have been paid at the time of import.

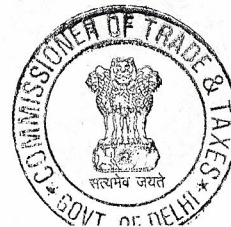
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So, without payment of due excise duty, no goods can be transported/dispatched by the dealer (who is a wholesaler) to its retailers (Government corporations in NCT of Delhi i.e. DSIDC, DTTDC, Delhi Consumer Wholesale Store etc.) The Government has made a procedure/arrangement that the excise duty payable by the wholesale dealers shall be deposited by these retailers (corporations). However, primarily, it is the liability of the wholesaler to pay the said excise but the same is being paid by the retailer on behalf of the wholesaler on the basis of which transport pass is issued. The excise duty is the part of sales price as per the price structure decided by the Excise Department as well as the VAT Department and the VAT Act covers amount of duties levied or leviable irrespective of the fact whether such duties are payable by the seller or any other person. So, the price of the product of the dealer is decided which includes the excise duty and VAT amount. So the GTO of the dealer includes basic price, Excise Duty, VAT and profit margin of the dealer and for all purposes these factors should be taken into account for accounting purposes. It is for the dealer to pass general entry in his books of account specifying the adjustment of amount of excise duty payable/paid on his behalf by the corporations and should credit to the corporations. So, the dealer has to reflect the entire amount of sales price including excise and VAT in the tax invoice, and accordingly has to reflect the full amount in the DVAT 16 and the total of such invoices shall be his GTO. The dealer, however, can reduce the amount of Excise Duty paid by the corporations from the bill amount as the balance amount which is to be taken from the corporations for the supply of IMFL. But this adjustment has nothing to do with DVAT 16.

The contention of the dealer that section 43B of the Income Tax Act, 1961 restrains him from claiming the deduction on account of excise duty as these deductions are based only on actual payment basis is not correct because section 43B(a) itself allows any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force. The explanations given after the said section clarifies the situations where such

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deductions are not allowed. But the instant case is different as the dealer is liable to pay the said dues and the said dues have been paid within the same assessment year. The act of making payment by corporations is a financial adjustment between the two parties.

6. I heard arguments put forth by both the parties. I have also perused the statutory provisions relating to the transaction the dealer is engaged into and I am of the considered view that in the instant case, 'the Excise Duty amount as levied or leviable on the applicant dealer is not liable to be reduced or adjusted in DVAT 16. The applicant is liable to reflect the entire 'sale price' as defined under section 2(1)(zd)(v) of the DVAT Act, 2004 in DVAT-16 during a tax period. And no reduction of tax paid against excise duty by the corporations on behalf of the dealer is allowed in DVAT 16. As per the definition of 'sale price' under the DVAT Act, it is immaterial whether such duties are payable by the seller or any other person. In brief, the GTO of the dealer shall be total of all tax/retail invoices issued during a tax period and such sales price shall be inclusive of excise duty paid by the corporations on behalf of dealer and no deduction shall be allowed from DVAT-16.
7. Held accordingly.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant
2. Addl. Commissioner (Law & Judicial)
3. Assistant Commissioner (Policy)
4. System Analyst, for uploading this order on web.
5. President, Sales Tax Bar Association (Regd.)
6. Guard File

(Prashant Goyal)
Commissioner, VAT

