

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

No.332/CDVAT/2013/188

Dated: - 02.09.2013

M/s Vingrace,
A-127, Lajpat Nagar,
Part-I, New Delhi-110024

ORDER

Present for the Applicant : Sh. J.K. Jain, & Sh. Sanjeev
Saxena, Chartered Accountants
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

The above named applicant filed an application on 07/03/2013 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 items PT-Uni, Vertical Platform Lifts, Stair Lifts and Hoist being Aids and implements and instruments used by handicapped and disabled/differently abled persons are exempt from Delhi VAT under Entry no. 2 (V) of the First Schedule to the DVAT Act, 2004?”

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.2000/- paid through bank demand drafts no. 427058 and 545291 dated 26.02.2013 and 09.07.2013 respectively.
3. M/s Vingrace is registered with department having TIN 07950335133 and engaged in the business of imports and resale of Aids, implements and instruments including wheel chairs used by handicapped, disabled and differently abled persons. Now, the applicant is in the process of importing different kinds of assistive devices, rehabilitation aids and implements and

other goods for handicapped, disabled and differently abled persons such as PT-Uni, Vertical Platform Lifts, Stair Lifts and Hoist.

4. Sh. J.K. Jain and Sh. Sanjeev Saxena, Counsels for the applicant appeared and reiterated the grounds of the determination application. Counsels submitted the details of imported items. The brief details are as under:

PT-Uni- It is an apparatus being used for lifting wheel chairs carrying handicapped, disabled and differently abled persons and carrying them up and down the stairs. Its trade name is PT Universal and brand name is Sano.

Vertical Platform Lifts- It is also an apparatus used for wheelchair users for climbing up or down who on their own cannot climb up or down. These are mostly ADA or European compliant or have low traveling height like 10Cms to 3.0 Mts. Its Trade name is Vertical/Wheel Chair Lift and brand name is Garaventa Lift.

Stair Lifts- It is also an apparatus being used for lifting the handicapped, disabled and differently abled persons for climbing up or down who on their own cannot climb up or down through stairs. Its trade name is Stair lift and brand name is Garaventa Lift and Acorn.

Hoist- It is used for lifting or transferring the patients and other handicapped, disabled and differently abled persons from bed to wheel chair, wheel chair to commode and bath etc. Its trade name is patient hoist/wheel chair transfer hoist and brand name is AKS.

The Counsel submitted that these items are made to assist the handicap persons and cannot be used by other persons, hence, should fall in entry no. 2 (v) of Schedule I appended to DVAT Act, 2004. In support of his contention, counsel produced the copy of notification no. 12/2012 dated 17.03.2012 issued by the Department of Revenue,

Ministry of Finance, Government of India and stated that assistive devices, rehabilitation aids and other goods for disabled are also exempted under heading 8713 10 10 of Central Excise Tariff Act. The Counsels also referred to the judgment of Hon'ble VAT Tribunal, Delhi in case of M/s Televista Electronics (P) Ltd. and stated that in the aforesaid decision it has been held that where the ordinary trade names are used then the commercial parlance test is readily available, but where generic expressions of scientific or technological meaning are used, the technical meaning would be more relevant and in such cases technical or dictionary meaning should be preferred. In view of the said decision, counsel submitted the dictionary meaning of terms **(Aids, Implements, Handicapped person, Used by)** used in entry no. 2 of Schedule I appended to DVAT Act, 2004. Based on the facts/submissions, the counsel concluded that these items under determination are exclusively meant for handicap persons only as certified by German, British Authorities, thus fully covered by entry no. 2 (v) of the Schedule I appended to the DVAT Act, 2004.

5. The Departmental Representative stated that to examine the position of these items under determination in DVAT Act, 2004, the brochure literature of items along with their uses and pictures are required. On 10.07.2013, the departmental representative asked for more time to examine the submissions of counsel. The case was adjourned to 24.07.2013, but the counsel failed to appear on 07.08.2013 and 22.08.2013. The case was kept for order on 22.08.2013.

For convenience the relevant entry of the Act is reproduced below:

Entry no. 2 of Schedule I-

Aids and implements used by handicapped persons, that is to say,

- (i) Orthopedic or fracture appliances
- (ii) Artificial joints and Artificial parts of the body
- (iii) Frequency modulated hearing aid system used for hearing by handicapped persons
- (iv) Parts and accessories of hearing aids
- (v) Wheel chairs for invalids, whether or not mechanically propelled**

(including motorized) and their parts and accessories

- (vi) Braille typewriters whether electric or non electric
Braille Paper

The departmental representative stated that entry no. 2 of Schedule I contains the expressions “that is to say” so the entry is descriptive, enumerative and exhaustive and circumscribes, to a great extent, the scope of the entry. The Supreme Court in the case of Rajasthan Flour Mills *vs* State of Rajasthan (1993) 91 STC 408 (SC) while interpreting section 14 of the CST Act, 1956 held that the words “that is to say” are used in description of various items, e.g. cereals, that is to say; oil seeds, that is to say, etc. The Supreme Court held that these words limit the operation of section 14 to the goods specifically mentioned therein and not others, e.g. cereals that is to say paddy, rice, wheat.....; then “wheat” cannot include products of wheat like flour, maida, suji etc. So, the scope of entry no. 2 and its sub-entry (v) is limited to Wheel chairs for invalids, whether or not mechanically propelled (including motorized) and their parts and accessories and it shall not cover items PT-Uni, Vertical Platform Lifts, Stair Lifts, Hoist.

6. I have perused in detail the application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and heard both the parties. After going through the various schedules appended to the said Act and the documents/submissions placed on record, I am of the considered view that the items i.e. PT-Uni, Vertical Platform Lifts, Stair Lifts and Hoist are not covered by entry no. 2 (v) of Schedule I of the Delhi Value Added Tax Act, 2004 and are unspecified items covered under Section (4) (1) (e) of the DVAT Act, 2004 and hence are taxable@ 12.5%. Held accordingly.

(Prashant Goyal)
Commissioner, VAT

Copy for information and necessary action to:

1. Applicant

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

(Prashant Goyal)
Commissioner, VAT