

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

No.335/CDVAT/2013/168

Dated: 21-6-13

M/s Membrane Tyres Pvt. Ltd.,  
Plot No. 56, FIE, Patparganj,  
Delhi-1110092

**ORDER**

Present for the Applicant : Sh. O.P. Aggarwal, Advocate  
Present for the Department : Sh. T.C. Sharma, Departmental  
Representative

The above named applicant filed an application on 06/05/2013 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: -

***“What will be the rate of tax on the ‘Tyres Retreading Material’ which is being used in Works Contract, though as per Schedule III of DVAT Act, the rate of tax is 5% on such material if sold otherwise?”***

2. The application has been preferred in the prescribed format DVAT-42 and the requisite fee of Rs.500/- paid through bank demand draft no. 012465 dated 04.05.2013.
3. M/s Membrane Tyres Pvt. Ltd. is engaged in the business of retreading of old worn out tyres. The dealer buys retreading material locally from MRF Delhi Office and uses this material for retreading the worn out/old tyres received from other customers and therefore, undertakes works contract for retreading of old tyres.
4. Sh. O.P. Aggarwal, Counsel for the applicant appeared and reiterated the grounds of the determination application. He submitted that there is a

difference of opinion in customer circle regarding the rate of tax to be charged on retread material used in work contract. He further submitted that other retreaders in Delhi are charging @5% on retreading material used in works contract, which in turn affect their business adversely.

5. The Departmental Representative referred the various relevant provisions and definitions given under the Delhi Value Added Tax Act, 2004 and DVAT Rules, 2005 which are as under: -

**(i) Relevant Definitions:**

**Section 2 (1) (m) “goods”** means every kind of moveable property (other than newspapers, actionable claims, stocks, shares and securities) and includes -

- (i) livestock, 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;

**Section 2 (1) (zc) “sale”** with its grammatical variations and cognate expression means 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 a works contract;**

**Section 2 (1) (zo) “works contract”** includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;

**(ii) Relevant Provisions of the DVAT Act**

**section 4 Rates of tax**

(1) The rates of tax payable on the taxable turnover of a dealer shall be-

- (a) in respect of goods specified in the Second Schedule, at the rate of one paisa in the rupee;

- (b) in respect of goods specified in the Third Schedule, at the rate of five paise in the rupee;
- (c) in respect of goods specified in the Fourth Schedule, at the rate of twenty paise in the rupee;
- (d) in respect of the goods involved in the execution of the works contract, at the rate of twelve and a half paise in the rupee; and**

*Provided that tax shall be paid at the rate of five paise in the rupee of the turnover of the dealer pertaining to declared goods, as defined from time to time in the Central Sales Tax Act, 1956 (74 of 1956), involved in the execution of works contract if such goods are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor:*

*Provided Further that in respect of the works contracts which are in the nature of printing works, the rate of tax shall be five paise in the rupee.]*

- (e) in the case of any other goods, at the rate of twelve and half paise in the rupee.

#### **section 5 Taxable turnover**

**sub-section(2)** *In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, subject to such conditions as may be prescribed:*

*PROVIDED that where the amount of charges towards labour, services and other like charges is not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the prescribed percentages.*

#### **(iii) Relevant Provisions of the DVAT Rules**

**Rule 3. Works contract. -(1)** *In case of turnover arising from the execution of the works contract, the amount representing the taxable turnover shall be the value at the time of transfer of property in goods (whether as goods or in some other form) involved in the execution of work contract and shall exclude -*

- (i) *the charges towards labour, services and other like charges; and*  
 (ii) *the charges towards cost of land, if any, in civil works contracts;*

**Rule 3 (2).** For the purpose of sub-rule (1), the charges towards labour, services and other like charges shall include-

- (i) labour charges for execution of works;  
 (ii) charges for planning and architects fees;

- (iii) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (iv) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract;
- (v) cost of establishment of the contractor including cost of marketing, finance expenses and securities deposits to the extent it is relatable to supply of labour and services;
- (vi) other similar expenses relatable to supply of labour and services;
- (vii) profits earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites:

PROVIDED that where amount of charges towards labour, services and other like charges are not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the percentages specified in the following table: -

TABLE  
PERCENTAGES FOR WORKS CONTRACTS

	Type of contract	Labour, service and other like charges are percentage of total value of the contract
1	Fabrication and installation of plant and machinery.	Twenty five percent
2	Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purloins and the like.	Fifteen per cent
3	Fabrication and installation of cranes and hoists.	Fifteen percent
4	Fabrication and installation of elevators (lifts) and escalators.	Fifteen percent
5	Fabrication and installation of rolling shutters and collapsible gates.	Fifteen percent
6	Civil works.	Twenty five percent*
7	Installation of doors, doorframes, windows, frames and grills.	Twenty percent
8	Supply and fixing of tiles, slabs, stones and sheets.	Twenty percent
9	Supply and installation of air conditioners and air coolers.	Fifteen percent
10	Supply and installation of air conditioning equipment including deep freezers, cold storage plants, humidification plants and de-humidors.	Fifteen percent
11	Supply and fitting of electrical goods, supply and installation of	Fifteen percent

	electrical equipments including transformers.	
12	Supply and fixing of furniture and fixtures, partitions including contracts for interior decoration and false ceiling.	Twenty percent
13	Construction of Railway coaches and wagons on under carriages supplied by Railway.	Twenty percent
14	Construction or mounting of bodies of motor vehicle and construction of trailers.	Twenty percent
15	Sanitary fitting for plumbing and drainage or sewerage.	Twenty five percent
16	Laying underground surface pipelines, cables or conduits.	Thirty percent
17	Dyeing and printing of textiles.	Thirty percent
18	Supply and erection of weighing machines and weighbridges.	Fifteen percent
19	Painting, polishing and white washing.	Thirty percent
20	All other contracts not specified from Sl. No. 1 to 19 above.	Twenty percent

The Departmental Representative stated that the work relating to retreading of worn out tyres received from other customers is covered under the definition of 'Works Contract'. The retreading material used by the dealer is 'Goods', and as per section 2 (1) (zc) it is a sale, further as per section 4 (1) (d) the rate of tax on such works contract is 12.5%. The taxable turnover shall be calculated after allowing deductions on account of labour charges from the entire consideration received for the Works Contract so executed. In case the amount of charges towards labour services and other like charges as defined under rule 3 (2) of DVAT Rules, 2005 are not ascertainable from the books of accounts of the dealer, the amount of charges shall be at the rate of 20% as given at Sr. No. 20 of the above table provided under rule 3 (2) of the DVAT Rules, 2005.

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 keeping in view the provisions of DVAT Act, 2004 and DVAT Rules, 2005 referred to above, I am of the considered view that the retreading of old tyre is a works contract and material used in the execution of such works contract is taxable @12.5%. The taxable turnover in such cases shall be governed by provisions of section 5 (2) of Delhi Value Added Tax Act,

2004 and rule 3 (2) of the Delhi Value Added Tax Rules, 2005. 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**