

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

No.180/CDVAT/2007/Review/111-116

Dated:25-4-2013

M/s Shreejee Peekay International,
101, CSC, DDA Market, Pushpanjali,
Delhi-110092

ORDER

Present for the Applicant : None
Present for the Department : Sh. T.C. Sharma, Departmental
Representative

During the course of training of staff, the controversy arises in the decision of determination order (here-in-after called said order) passed earlier on 01.02.2008 in case of M/s Shreejee Peekay International. Thereafter, a notice for suo-moto review of the said order was issued to the dealer vide no. 180/CDVAT/2007/75 dated 20.11.2012.

- (i) The Departmental Representative stated that in the case of M/s Shreejee Peekay International vide order no. 80/CDVAT/2007/183 dated 01.02.2008, it has already been held that "Horticulture contracts don not always involve tax free goods. In contracts wherein taxable goods are involved would necessarily attract VAT. The rate of tax in respect of goods involved in the execution of works contract as per section 4 (d) of DVAT Act, 2004 is 12.5% and in respect of declared goods @4%. The composition scheme as provided in section 16 of the DVAT Act, 2004 would be available to the applicant if the turnover of the dealer does not exceed Rs.50 Lacs during the financial year".

- (ii) Hence to determine the legal position in respect of taxability of exempted goods when used in the execution of works contract, the matter under review is as under:

“Whether VAT is applicable on Horticulture composite contracts wherein goods involved/used for execution of such works contract are covered under schedule I of the DVAT Act, 2004 and are exempted from levy of VAT?”

2. Sh. Anand Swaroop Garg, Counsel for the applicant appeared on 06.12.2012 and filed written request for the adjournment of the date of hearing along with power of attorney. In further proceedings of the case on various dates, neither counsel appeared nor any written information received. Further, in the interest of justice one more opportunity was granted to appear on 15.01.2013. Again, Counsel for the applicant shows the reluctant behavior to appear. Then, DR was allowed to submit his views about the case on the assumption that Counsel is not interested to appear before this court and have the same intention, as that was earlier.
3. The Departmental Representative submitted that the many departments/organizations/companies award horticulture contract, which may include development of lawns/parks/roadsides and their maintenance. For simplicity, he referred to the relevant provisions and definitions given under the Delhi Value Added Tax Act, 2004 and DVAT Rules, 2005 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 paise in the rupee;*

(b) *in respect of goods specified in the Third Schedule, at the rate of four 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;*

4. Further, Departmental Representative submitted that in the Horticulture Contracts involving development of lawans/parks/roadsides and their maintenance, there may be use of materials like bricks, cement (taxable goods), plant fertilizers, etc. (exempted goods) whereas in the maintenance contracts, the material may be limited to seeds, saplings, plants, organic manure, fertilizers, bio-inputs like bio-fertilizers, micronutrients and plant growth promoters etc. which are tax free items. However, if the contract given is composite in nature meaning thereby that the amount involved for supply of material required and the labour in services charges are not divisible, then the said transactions are covered under the definition of works contract as per the scheme of the Act, presently there are four

schedules containing items ranging from 0% to 20% besides residual items are taxable @12.5% as per section 4 (1) (e) of the said Act. Further, section 4 (1) (d) of the said Act is exclusively related to rate of tax applicable in respect of the goods involved in the execution of the works contract which is 12.5%. Hence, the rate of tax on goods involved in the execution of works contract are not covered by the schedules but are governed by the section 4 (1) (d) of the said Act. In brief, all goods involved in execution of works contract except the declared goods (taxable @5%) are taxable @12.5% irrespective of the fact whether such goods pertains to Schedules I or Schedule II of the said Act.

5. I have perused in detail the earlier application filed under Section-84 of the Delhi Value Added Tax Act, 2004 and decision made in it. After going through the provisions, various schedules of DVAT Act, 2004 and DVAT Rules, 2005 referred to above, I am of the considered view that the rate of tax in respect of the goods involved in the execution of all types of works contracts, irrespective of the fact under which schedule such goods are covered, are taxable @12.5% under section 4 (1) (d) of the Delhi Value Added Tax Act, 2004. But the declared goods (as defined in the Central Sales Tax Act, 1956) and used in the same form are taxable @5% (earlier 4%) w.e.f. 01.10.2011. 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