



Taxability of Franchise Business:

Query-1: A dealer based in Delhi has been engaged in the business of running restaurants. He owns trademark to run such restaurants in

India. He entered into agreements to franchise outside the state of Delhi to run restaurants with other parties. The other parties will be paying to the dealer fixed percentage of commission based on the total turnover of such restaurants in lieu of trademark and allied services like quality control, manpower, designs, etc. Whether the dealer is liable for DVAT/CST on such commissions received?

Answer-1: Yes; you may refer to the definitions of 'goods' U/s 2(1)(m)/'sale' U/s 2(1)(zc)(vi) under the DVAT Act, 2004. The hon'ble Delhi High Court in the case of **Philco Exports [124 STC 503]** while interpreting the definition of 'property' U/s 2(g) of the DST Act, 1975 opined that all kinds of properties whether corporeal or incorporeal i.e. all proprietary rights fall under the definition.

As far as the liability of tax under DVAT or CST is concerned, in the case of intangible assets like trade marks, patents etc. it would be treated as deemed sale under the Transfer of Right to Use Goods after the 46th amendment in the Constitution and, 20th Century [(2000) 119-STC 182 (SC)] case is relevant that holds that in such cases the place of agreement is important, therefore, situs of sale in this case is Delhi and the dealer is liable to pay DVAT @ 4% [Entry 3 of Third Schedule] on the gross commission received or receivable during the period/year.

Non-resident as authorized signatory of Business:

Query-2: Whether the authorized signatory or manager of the dealer should be resident in Delhi, or he can be a resident in India or even a non-resident can become an authorized signatory of a dealer under the DVAT Act.

Answer-2: Any one can become the authorized signatory or manager of a dealer in Delhi, since there is no embargo in law under section 29 or 95 of the DVAT Act on this point.

Security for Central Sales Tax:

Query-3: Whether surety/security under the CST Act is also liable to be filed at the time of registration.

Answer-3: No.

Date of Grant of Registration:

Query-4: What would be the date of grant of registration?

Answer-4: Date of service of RC/TIN by any mode of communication. Even verbal communication of TIN being evidenced by the act on the part of the dealer he while deposited the taxes and filed the returns would tantamount that he was granted registration. Also proviso to section 19(3)(b) states that- "PROVIDED that where the Commissioner has not registered the person or issued a notice by the required date, the applicant shall be deemed to be registered for the purposes of this Act, and the

DVAT – Some Queries

Commissioner shall issue a certificate of registration to such person.

Returns can be filed by post:

Query-5: Whether the documents like returns etc. can be filed other than in person like through registered post etc.?

Answer-5: Yes.

Maintenance of Stock Records:

Query-6: Whether the stock records are mandatory to be maintained by all dealers under section 48 of the DVAT Act even if we read the section along with Rule-6 of the DVAT Rules.

Answer-6: Yes; since Rules cannot override the Act.

Accounting through SAP:

Query-7: In case the centralized accounting is made through systems like SAP like in the case of some companies such accounting is made in Mumbai, whether it is a sufficient compliance of section 48 of the DVAT Act.

Answer-7: No, it is to be maintained at the place of business.

Accounting on Cash Basis:

Query-8: When the definition of 'sale price' under section 2(zd) means the amount paid or payable as valuable consideration for any sale, whether the accounts can be maintained on cash basis?

Answer-8: No; however, receipt and accrual can coincide. Also it is conflicting law.

Financial Accounts Branch Wise:

Query-9: In compliance of the provisions of section 48 of the DVAT Act, whether the Profit and Loss Account and Balance Sheets etc. are to provided branch-wise or city-wise or for whole of the unit i.e. for whole India basis.

Answer-9: Branch-wise and city-wise.

Participation in an Exhibition:

Query-10: Whether a registered dealer participating in an exhibition for 15 days need to intimate to the department?

Answer-10: Yes.

Wrong claim of Input Tax Credit:

Query-11: In case goods are purchased locally and ITC is claimed and at a later stage the goods are branch transferred and 4% reversal is made at the time of such transfer. In such situation the dealer need to prove that at the time of purchase of such goods there was no intention to transfer these goods, otherwise, it would be considered as violation of wrong claim of ITC.

Answer-11: Yes; the three judges' bench of the SC in the case of India Agencies (2005) 139 STC 329 has stated that the documents prescribed under the Rules must be provided to claim statutory benefits.

Intimation of Branch Office:

Query-12: Whether in case a dealer opens a branch outside Delhi need to intimate to the Department?

Answer-12: Yes.

Return of Goods within 6 months:

Query-13: In the case of return of goods under the CST Act within 6 months, whether limitation is to be calculated from the date of delivery or from the date of the bill.

Answer-13: Date of Delivery.

Non-receipt of 'C' Forms:

Query-14: When a person is making CST-RD sales to a person on the basis of Applied For and he is unable to obtain CST forms because of the purchaser being registered late, or Forms are found bogus then the selling dealer will not be able to claim ITC/would he be liable to pay penalty for wrong claim of ITC under the local Act and at the same time would be liable to pay CST with interest and penalty.

Answer-14: Yes.

Exempted Sales to SEZ:

Query-15: When a SEZ dealer is found not eligible to purchase some goods as tax free by the taxing authorities, whether the selling dealer is liable for penalty for making tax free sales to such dealer?

Answer-15: Yes; it is the responsibility of the selling dealer to verify the RC of SEZ dealer whether he is authorized to purchase the goods tax free or not. Normally SEZ dealers are authorized to purchase goods tax free but not every thing. Therefore, it is the duty of the selling dealer to verify whether SEZ dealer is competent to make tax free purchases.

Central Sales from Tax Free Zone:

Query-16: When a dealer is making a CST sales from a tax free zone, who is neither liable for Local nor Central sales tax to registered dealers against 'C' forms and such 'C' forms are not obtained. Whether he would be liable for tax under the Central Act.

Answer-16: Yes.

Input Tax Credit on Sales of Second Hand Goods:

Query-17: What are the conditions to be fulfilled for claiming tax credit on sale of second hand goods?

Answer-17: (i) A registered dealer sells second hand goods;

- (ii) Goods are purchased from resident unregistered dealer;
- (iii) Goods are purchased either for trading stock or as raw material
- (iv) Dealer has adequate proof of payment for such purchases and payment of Tax in the form of original invoice.
- (v) Tax credit shall be allowed when the registered dealer sells goods.
- (vi) Name, Address and PAN of the unregistered seller are required.

Composition Scheme:

Query-18: Whether tax is payable on 'Taxable Turnover' or 'Gross Turnover' under the composition scheme? Is it not unconstitutional to tax exempted sales under composition scheme?

Answer-18: Gross Turnover. The Apex Court in the case of State of Kerela vs. Builders Association of India (1997) 104 STC 134 (SC) held the composition scheme to be optional and within the preview of law.

Lease of a Factory whether taxable:

Query-19: Whether a factory premises along with plant and machinery leased would be subject to tax under transfer of right to use goods under DVAT Act?

Answer-19: The Allahabad High Court in the case of CST vs. Prahlad Industries (1999) 112 STC 548(All) held that the plant and machinery were attached to the earth and were immovable property and, therefore, were not liable to tax.

Double Transfer of Goods against "F" Form:

Query-20: A dealer P in Delhi purchased goods on the strength of Form-F and further transferred them to other states on the strength of Form-F again. What is the tax liability of the dealer P?

Answer-20: Nil.

Liability of a Builder under DVAT:

Query-21: Whether a builder is liable to pay DVAT?

Answer-21: The UP State Government has launched a drive to register city builders for payment of sales tax following the Supreme Court order in K Raheja Development Corporation v. State of Karnataka (44 DSTC J-148) case which had defined the construction of a multi-storied apartment through collection of the booking amount for flats as a "works contract" between the builder and the purchaser of flats and hence taxable. Official sources have informed that the Sales Tax Department has already acquired the list of builders from the Lucknow Development Authority (LDA) to identify those who would now be liable to pay sales tax on sale of property.

The author is of the view that in view of the Supreme Court judgment the State laws in respect of VAT/Sales Tax and the Central Act in respect of Service Tax may be suitably amended or clarified so that the anomaly on the subject may be removed. Some builders are charging service while handing over the possession of the properties which is not within the preview of law and some states are taking action as aforesaid without looking in to the facts and circumstances of each case of the builder. □

Compiled by: CA. Virander Chauhan, a member of the Institute. The views expressed herein are his personal views and do not necessarily represent the view of the Regional Council.

MEMBERS AT HELM OF AFFAIRS



CA. Suneel Maggo (M.No. 084647) has been appointed as Chairman of Corporate Cell of Delhi Pradesh Congress Committee

Heartiest Congratulations!