e-Commerce and VAT/CST

CA. Virander Chauhan

Need of the Hour:

"Law cannot stand still, it must change with the changing social concepts and values. If the law fails to respond to the needs of the changing society, then either it will stifle the growth of the society and chock its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must, therefore, constantly be on the move adapting itself to the fast changing society and lag behind."- **P.N. Bhagwati.**

The law has nurtured, so is the definition of the term 'goods' under various sales tax laws. Now, it is judicially decided that the term 'goods' is not merely what is tangible but it embraces within its ambit what is called intangible too. Like electricity, softwares etc.

Not only the definition of the term 'goods' has widened so is the effect on the mode and method of doing business with the advent of technology. Now the computers have ruled over the age of chivalry.

Tele-Marketing:

E-Commerce and tele-marketing have almost faded the ancient times of doing business at places of mandies and markets.

These novice methods of doing business not only save costs and time but also provide business opportunities to the mass. In developed countries tele-marketing has spread at a great pace and it is spreading its wings in the rest of the world also.

Telemarketing is normally done in two ways. In-bound and out-bound. In the in-bound the telemarketer displays its products, their qualities, price etc. along with his contact details like address, telephone no and web-site address etc. on TV and the customer watching the TV makes a call on telephone or book the order through internet making payments normally through credit card.

In the case of out-bound tele-marketing the tele-marketer normally calls the customers through telephone or via e-mails and gives them the details of his products and books the orders.

Tele-Marketing & VAT/CST:

With these technological developments the application of the sales tax laws have become quite complex. Let us analyze some of the situations under the local and central sales tax laws in relation to e-commerce transactions.

In both the situations in-bound and out-bound the transactions may take place as follows: -

(a) In this case the tele-marketer is sitting in Delhi and the customer is also in Delhi and the goods are delivered locally. In this case the provisions of DVAT will be applicable.

(b) In this case the tele-marketer is sitting in Delhi and the customer is in Mumbai and the goods are delivered from Delhi to Mumbai. In this case the provisions of section 3 of the Central Sales Tax Act, 1956 will be applicable.

(c) In this case the tele-marketer is sitting in Delhi and the customer is in USA. The goods are delivered from Delhi to USA. In this case the provisions of section 5 of the Central Sales Tax Act, 1956 shall be applicable. Since this is an export sale will not be liable to levy of sale tax.

(d) In this case the tele-marketer is sitting in Delhi and the customer is in Mumbai and the goods are delivered from Mumbai itself through the authorized agent of the tele-marketer. The payment is received by the tele-marketer in Delhi. This sale will be considered as a sale of the tele-marketer through his authorized agent. In this case it will be a local sale in Maharastra and the provisions of MVAT will be applicable in this case.

While looking into the tax aspects of the aforesaid transactions we have to analyze in each transaction, what is transferred, the movement of goods, payments, consideration, relevant state laws, central law, situs of sale etc. and we can find the liability of sales tax of the tele-marketer.

Benefits of Tele-Marketing:

The most important feature of e-Commerce is directness and removal of intermediaries from the chain thereby saving huge costs and time. The

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company like Amazon.com and e-bay.com are some examples who have realized the benefits of these technological advancements.

One of the most important characteristic of this e-commerce is the setting up of virtual shop at a low cost as compared to setting up of real shop at exorbitant price. Not only this but thousands of shops can be combined together and the customer can purchase so many things by paying at one go.

Portals are another form of e-commerce where sellers of different products come together at one site and the customer can buy many products for which he can pay in aggregate with one payment. Moreover, the customer can set out complex specifications and the search engines can assist the customer to find the products of his choice, which sometimes otherwise looks impossible.

Challenges of Tele-Marketing:

It is without doubt that e-commerce if full of some challenges like-non-availability of fast e-lines, question of jurisdiction in case of litigation, protection of consumers' interest, mode of payment, fulfillment of conditions of law of contract, problems of hacking, privacy of data, inadequacy of banking facilities, inadequacy and mis-interpretation of cyber laws and lack of evidence etc.

However, international organizations like NASSCOM, UNCITRAL, OECD, WIPO, ICANN etc. and technology developers have been engaged to overcome such challenges and e-commerce has been becoming the fashion of the modern era. We can presently say that e-commerce is meant for those who like challenges on the road to progress.

Commodity Exchange:

The commodity exchange as the name suggests provides us a platform where national as well as international commodities like Bullions, Metals, Oils, Chemicals, Sugar, Grains and Pulses etc. are traded online both at present and future. These exchanges are regulated by the 'Forward Market Commission'. At present the commission has given approval to the following commodity exchanges: -

(a) NCDEX (National Commodity & Derivatives Exchange of India Ltd.)

(b) MCX (Multi commodity Exchange of India Ltd.)

(c) NBT (National Board of Trade)

These exchanges provide a very effective platform for price risk management to the producers, traders and the consumers at large.

Trading at Commodity Exchanges:

Similar on the lines of the stock exchanges, these exchanges also are run by their 'Trading cum Clearing Members' i.e. brokers who on fulfillment of certain conditions open the account of their customer and the customers are provided with a terminal who in turn can do online trading of the commodities listed on that particular stock exchange. The transactions are settled through brokers on the settlement day not necessarily through delivery of the goods traded. The settlement day is fixed by the exchange in accordance with the procedures laid down by the Regulator.

Delivery of Goods:

In case the transactions are settled through the delivery of goods on the designated day the same are made not to the buyers but to the respective warehouses of the respective commodities. The warehouses accept the commodities which meet the specifications of the contract and thereafter give credit in the electronic account of the buyer through the depository mechanism system.

Collection of Taxes:

In these cases the seller duly raises an invoice on the buyer and delivers that invoice through his broker. Incase the buyer intimates that the purchases are made against declaration forms the seller accordingly raises the invoice giving the benefit of tax.

Liability under VAT and CST:

In the case of *State of Bombay v. Ratilal Vadilal & Bros (1961) 12 STC 18 (SC)* the Apex Court held that the agents securing orders without affecting actual purchase and sale are not dealers. In the commodity exchange this law applies on the brokers who act on behalf of their customers and, therefore, are not liable to get registered as dealers and as such are not liable to pay tax.

In cases where the transactions are completed otherwise than delivery of goods the buyers and sellers both settle their account on the rate difference only, and, therefore, such transactions are held to be of speculative nature and are not liable to tax. As held in the case of *State of madras v. Gannon Dunkerley & Co (1958) 9 STC 353 (SC)*, in these cases since 'transfer of property in goods' is missing, therefore, these transactions can not be held as 'sale'.

In case the delivery is given by the seller to the designated warehouse within the state the local laws of the respective state shall be applicable and in case the warehouse is outside the state, the provisions of the Central Act shall be applicable. ❑