

From

Excise & Taxation Commissioner,  
Haryana, Panchkula.

To

All the Dy. Excise & Taxation Commissioner (ST),  
in the State of Haryana.Memo No. 1807 ST-I,  
Panchkula, dated the 22/08/2013**Subject: Circulation of Clarification-M/s Redington India Limited, Panchkula.**MEMORANDUM

A copy of clarification order issued by the Principal Secretary to Government of Haryana, Excise & Taxation Department under section 56(3) of Haryana Value Added Tax Act, 2003 sought by M/s Redington India Limited, Panchkula holding TIN 06212501615 is sent herewith for information and necessary action by all the concerned.

Ram Raj 22-8-13  
Superintendent (Sales Tax)  
for Excise & Taxation Commissioner, Haryana.

Endst. No. 1808 / ST-I, Panchkula, dated the 22/08/13

A copy alongwith a copy of clarification is forwarded to the following for information and necessary action:-

- Regd.
1. M/s Redington India Limited, # 150, Industrial Area, Phase-2, Panchkula.
  2. Jt. Excise & Taxation Commissioner (Divison/Range) Ambala, F/Bad, Gurgaon and Hisar.
  3. All Joint Excise & Taxation Commssioners (Appeals) in the State of Haryana.
  4. Senior Deputy Accountant General (Audit), Haryana, Chandigarh.
  5. Dy. Excise & Taxation Commissioner (Vigilance), Haryana Vigilance Bureau, Sector-6, Panchkula.

Ram Raj 22-8-13  
Superintendent (Sales Tax)  
for Excise & Taxation Commissioner, Haryana.

Endst. No. 1809 / ST-I, Panchkula, dated the 22/08/13

A copy alongwith a copy of clarification is forwarded to the following in the Head Office for information and necessary action:-

1. All Addl. Excise and Taxation Commissioners
2. Jt. Excise and Taxation Commissioners
3. Jt. Director (L)-I and II
4. Dy. Excise and Taxation Commissioner / ETO
5. DA-I and II
6. DDA-I & II
7. Superintendent (C) for sending E-mail to all the DETCs(ST) and for uploading on website.
8. ST-II only (For adding in The Annual Sales Tax Circular, 2013).

Ram Raj 22-8-13  
Superintendent (Sales Tax)  
for Excise & Taxation Commissioner, Haryana.

**ORDER OF CLARIFICATION MADE BY SHRI HARDEEP KUMAR, IAS,  
PRINCIPAL SECRETARY TO GOVERNMENT OF HARYANA,  
EXCISE & TAXATION DEPARTMENT,  
Under Section 56(3) of the Haryana Value Added Tax Act, 2003  
To M/s. Redington India Limited, Panchkula**

M/s Redington India Limited, 150 Industrial Area Phase II, Panchkula (TIN- 06212501615) (here-in-after referred to as the applicant) has sought a clarification under Section 56 (3) of the Haryana Value Added Tax Act, 2003 (the Act) on the issue i.e. ***"Whether VAT is applicable on the basic price of software/software license plus service tax or only on basic price of software/software license?"***

2. As per the statement of facts the applicant dealer is a distributor of IT and non IT products including software and software licenses. The applicant has to pay vat as well as service tax on sale of software licenses. As per the understanding and interpretation of the law by the applicant, the applicant is presently paying VAT on the basic price of software as well as on the element of service tax chargeable on the software license. Though the applicant has been paying VAT on the element of service tax as well yet it is contended that the service tax is not includible in the sale price because of the two counts:-

- a) The definition of the sale price under the Act covers the amount of consideration paid for sale of goods and service tax being a separate levy by the Central Government cannot be termed as consideration or value of the sale.
- b) Sale price includes any sum charged for anything done by the dealer in respect of the goods and service tax component

is not a sum charged by the dealer for anything done on the goods but a statutory levy under the central legislation.

Reliance in his support that the service tax is not the part of the sale price has also been taken from a clarification issued by the Department of Trade and Taxes, Govt of Delhi.

3. The matter has been examined. The definition of sale price as contained in section 2(zg) of the HVAT Act 2003 which has relevance in the case, is reproduced as under:-

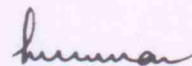
**“Sale price” means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any such sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression “purchase price” shall be construed accordingly;”**

4. Perusal of the definition of the sale price clearly stipulates that the amount payable to a dealer as consideration for the sale of any goods is the sale price of those goods. Here the concept of real price or price retainable by the dealer is irrelevant. The test is what consideration is passing from the purchaser to the dealer for the sale of goods. The liability to pay the service tax is of the service provider, who is the applicant in the present case. Admittedly the software/software licenses are goods and the consideration received against the sales of these goods includes the basic price, service tax and VAT. But the co-joint reading of definition of “sale price” and the “gross turnover” makes clear that the VAT charged under the Act would not form part of the sale

price. Since the liability to pay service charges is of the applicant and the applicant has received service tax from the purchaser as considerations for sale and hence the service tax would be the part of the sale price and VAT is applicable on the basic price of software/software license plus Service Tax.

5. Regarding the clarification issued by the Commissioner (Trade & Taxes), Delhi in similar circumstances it is suffice to say that the definition of "sale price" under the Delhi VAT Act is restricted to include only the amount of the duties levied or duties leviable on the goods under the Central Excise Act, 1944 or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 whether such duties are payable by the seller or any other person. Obviously the levies under the above referred Acts only are liable to be included in the "sale price" but the levy under the Service Tax Act has not been mentioned there so the same would not be included in the sales price as far as the Delhi VAT Act is concerned. But there is no such restriction under the definition of the "sales price" under the Haryana Act, so the clarification issued by Delhi authorities is not relevant under the Haryana Act.

6. Therefore, in the light of the above it is clarified that the VAT is applicable on the service tax element also.



(HARDEEP KUMAR)

Dated: 20.8.2013 Principal Secretary to Government of Haryana  
Chandigarh Excise & Taxation Department