

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

No: 258/CDVAT/2010/22

Dated: 18.03.2010

M/s Ingram Micro India Ltd.
159, Okhla Industrial Estate,
Phase-III, New Delhi-110020.

ORDER

Present for the Applicant : Sh. Yezdi Pithawala, Advocate.
Present for the Department : Sh. T.C. Sharma, DR

The above named applicant has filed an application on 12-01-2010 under Section 84 of DVAT Act, 2004 (hereinafter referred to as the "said Act") and the question put up before this Court for determination under the aforesaid provision of law is as under :-

“Whether VAT is applicable on basic price of Softwares/Software license plus Service Tax or only on basic price of Software license. ?”

2. The application for determination has been made in the prescribed format DVAT-42 and the requisite fees of Rs. 500/- paid through Demand Draft No. 000442 dated 11-01-2010.

3. Ingram Micro India Ltd. (applicant) is importer/reseller dealing in distribution of Information and Technology products and having operations in 24 States in India and is registered under the relevant DVAT/CST Acts of the States where it has warehouse/operations and files returns and discharges taxes accordingly. In Delhi, applicant is registered under VAT bearing Registration No. TIN-07170228086. As per the finance Act, 2009, Service Tax is applicable on sale of software licenses under the head Information Technology Software Services category in continuation of VAT which is levied as per Delhi VAT Act. The applicant has been charging VAT since introduction of VAT in Delhi.

4. Sh.Pithawala who appeared on behalf of the applicant reiterated the grounds of the application of determination and submitted that as per the current practice of billing and price module the company is charging Service Tax on basic cost of license and VAT is being charged on total value including Service Tax.

5. The DR on behalf of the Department argued that the applicant in response to question “Has Commissioner commenced your audit”? mentioned in column No.5 of the Form DVAT 42 (application for determination) has answered in positive, so an application for the determination is not maintainable under sub-section 3 of section 84 of the DVAT Act, 2004.

6. The Counsel for the applicant stated that his audit has already been completed and default assessment has been made on 22-10-2009 and the subject matter of the determinable question has not arisen from the audit.

7. For proper examination of the application filed by M/s Ingram Micro India, it is necessary to discuss the relevant provisions of the Delhi Value Added Tax Act, 2004. The business/transactions proposed to be conducted by the applicant is/are covered under the definition of term 'sale price' as contained in Section 2(zd) of the said Act which lays down that :

“Sale Price” means the amount paid or payment as valuable consideration for any sale including:-

- i. the amount of tax, if any, for which the dealer is liable under section 3 of this Act;
 - ii. in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;
 - iii. in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;
 - iv. any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;
 - v. amount of duties levied or leviable on the goods under the Central Excise Act, 1944(1 of 1944) or the Customs Act, 1962 (52 of 1962) , or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and
 - vi. amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;
 - vii. in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract;
- less -
- (a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;
 - (b) the cost of freight or delivery or the cost of installation in cases where such cost is separately charged. And the words “purchase price” with all their grammatical variations and cognate expressions, shall be construed accordingly;

8. The DR for the department stated that as per the definition of 'sale price' VAT is not to be charged on service tax.

9. I have perused in detail the application filed u/s 84 of the Act written submission filed by the Counsel for the applicant and also heard the Counsel for the applicant and departmental representative. I have also gone through the definition of 'sale price' under section 2(zd) of DVAT Act 2004. I am of the considered view that VAT is to be charged on basic amount and not on the service tax amount. It is held and determined accordingly.

(Jalaj Shrivastava)
Commissioner (T&T)

Copy for information and necessary action to :

1. The Applicant.
2. The Addl. Commissioner (L&J), Dept. of Trade & Taxes, GNCTD, N. Delhi.
3. The President, Sales Tax Bar Association, Dept. of Trade & Taxes, GNCTD, N. Delhi.
4. The Value Added Tax Officer, Policy Branch, Dept. of Trade & Taxes, GNCTD, N. Delhi.
5. Guard File.

(Jalaj Shrivastava)
Commissioner (T&T)