

GOVERNMENT OF ASSAM  
OFFICE OF THE COMMISSIONER OF TAXES:::ASSAM:::GUWAHATI

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**ORDER**

Dated Dispur, the 12<sup>th</sup> October, 2015.

No. CTS-51/2015/29 : The petitioner, M/s. Jainex Pariwahan Pvt. Ltd, filed a petition seeking clarification regarding—

1. Whether the applicant is a “dealer” within the meaning of the term as defined under section 2(15) of the AVAT Act;
2. Whether transaction of hiring of crane services at BCPL project site is a “sale” as defined u/s 2 (43) (iv) of the AVAT Act and is liable to tax.

Perused the petitioner’s prayer. I have also given my anxious consideration to the submission of the petitioner. Before proceeding to answer the queries of the Petitioner, it is important to lay down the relevant facts of the case-

That, the Petitioner is a registered company and is in the business of hiring cranes and transportation;

That, they have been awarded contract service for hiring crane service at Brahmaputra Cracker and Polymer Limited (BCPL) project site at Lepetkata;

That, as per terms of the contract, the crane service is inclusive of all lubricants, grease, spare parts, filters, consumables, fuel, operator, maintenance staff etc;

That, payments will be made by BCPL to the Petitioner on hourly basis on timing recorded in the log book for the crane actually in operation duty. No payments will be made by BCPL for not running of crane by the Petitioner for the period of contract which is 12 months with effect from 01/11/2014;

That, Petitioner is responsible for complying with all labour laws having own P.F. code and compliances under P.F. Act, obtaining labour licenses discharging obligations under various labour laws indemnifying BCPL all losses or damages on account of personnel deployed by Petitioner;

That, Petitioner is responsible to ensure regular and effective control of the personnel deployed by them and giving suitable direction for under taking the contractual obligation;

Now to qualify a transaction as “lease transaction” the following attributes must be present—

- (a) there must be goods available for delivery;
- (b) there must be a consensus ad idem as to the identity of the goods;
- (c) the transferee should have a legal right to use including any permissions or licenses required therefore should be available to the transferee;
- (d) for the period during which the transferee has such legal right, it has to be the exclusion to the transferor- this is the necessary concomitant of the plain language of the statute viz, a “transfer of the right to use” and not merely a license to use the goods;
- e) having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.”

From the perusal of the agreement between the Petitioner and BCPL, it is evident that all the attributes mentioned above are fulfilled. Also the major criteria in order to constitute a transfer of right to use good is that the effective control of the goods must not remain with the owner but must stand transferred to the lessee for the use by the latter at his will and it is this transfer of effective control of goods which attracts sales tax. Now in the instant case the contract signed between the Petitioner and BCPL is for a period of 12 months for which in addition to operating cost per hour a monthly fix charge is also paid by BCPL to the Petitioner. And during this period the Petitioner does not have legal right to hire out the cranes to others even when it is not in use. Therefore effective control of the cranes lies entirely with BCPL.

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Now as the Petitioner's transaction is established beyond doubt to be "lease transaction". the Petitioner's first query as to whether he is a dealer stands answered in the affirmative.

With the above observation, the Petitioner's prayer is disposed off with the clarification that the Petitioner is a dealer and VAT at the appropriate rate as stipulated in Fifth Schedule (Sl nos.3) of AVAT Act' 03 is payable by him.

Sd/-  
(Dr. Ravi Kota, IAS)  
Commissioner of Taxes, Assam  
Guwahati.

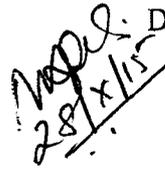
Memo No. CTS-51/2015/29-A

Dated Dispur, the..28 th October, 2015.

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioners of Taxes/ Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioner of Taxes , (All) for information.
4. The Assistant Commissioner of Taxes, (All) for information.
5. M/s. Jainex Pariwahan Pvt. Ltd, 2<sup>nd</sup> Floor, Ramkuar Arcade, Chatribari Road, Guwahati-781001 for information.

  
(A Choudhury)  
Joint Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

  
28/10/15