

Determination of disputed questions under VAT law - Prevalent diversity

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Consistency in the provisions of laws across states will lead to uniformity in interpretation resulting in hassle free trading.

Earlier business entities were mostly operating within a state and with limited exposure to inter-state transactions. However, with the opening up of the economy, businesses have spread considerably with inter-state dealings across the length and breadth of the country. Thus, it has become crucial to maintain uniformity in the state sales tax laws to ensure easy and simple mechanisms to trading entities. The objective of introducing VAT was to bring simplicity and transparency in the operation of the levy, making compliance easy and leading to growth in revenue of the states. As per the 'White Paper on State-level VAT' by the Empowered Committee of State Finance Ministers, the aim was also to avoid double taxation resulting in the cascading effect of tax along with harmonizing the rate of tax in order to help reduce cost and make business more efficient. VAT was introduced in India almost 8-10 years back with uniform rates on similar goods. However, within a short span of its existence, the rates were changed as per states' requirements thereby defeating the very purpose of uniformity as envisaged by the law makers.

As VAT was a fairly new concept in India, need for a mechanism was acutely felt whereby questions like product classification, rate of tax and taxability of a transaction could be answered. Accordingly, various states introduced specific provisions to enable assesseees to seek clarification from VAT authorities in respect of specific issues as provided in the respective state VAT laws. However, there is no uniformity in such provisions as regards the grounds on which clarification can be sought, the authority before whom application can be made, and time limit for giving the ruling. Further, in Maharashtra there are separate provisions for advance ruling and for determination of disputed questions, whereas in Karnataka there is a single provision for clarification and advance ruling.

As a result of this widespread disparity, dealers operating on pan-India basis are not able to follow a uniform process to seek answers to common questions confronting business in different states. Therefore it is imperative that there is uniformity in the grounds on the basis of which clarifications can

be sought. This will reduce litigation and create a hassle free environment for assesseees to freely trade in goods across India.

For the purpose of this article, we have analyzed the provisions that provide for seeking clarifications as provided in five states dominating the trade sector in Northern India i.e. Delhi, Haryana, Punjab, Uttar Pradesh and Rajasthan. The common questions/grounds on which determination can be sought by an assessee/dealer in all these five states are:

- (1) Activity amounts to manufacture or not
- (2) Requirement to obtain registration
- (3) Transaction constitutes a sale or purchase, if yes, sale price, purchase price thereof
- (4) Whether tax payable on a particular sale or purchase, if so, rate of tax
- (5) Whether dealer or not
- (6) Entitlement to input tax credit (except Uttar Pradesh).

The areas of non-uniformity in similar provisions of these states are highlighted in a tabular form as under:

Name of the State and relevant provision	Who can apply	Effect of the order	Time limit for passing order	State specific questions
Delhi - Section 84 read with Rule 58	Any person in Form 42	The Commissioner may direct that the determination shall not affect the liability of any person under the Act with respect to any transaction effected prior to the determination.	6 months from date of submission of question	<ul style="list-style-type: none"> • Identification of taxable quantum of a dealer for a period • Whether a transaction is works contract or transfer of right to use goods • Whether a transaction is exempt/not liable to tax under Sections 6 and 7. • Proportion of the turnover or turnover of purchases of a dealer which arises in a tax period, and the time at which an adjustment to tax or tax credit arises. • Whether a transaction is or would be import of goods and the value thereof • Whether a transaction is purchase, adjustment under Section 10 • Location of any sale or purchase • Applicability of composition scheme. • Tax period of a dealer

Haryana - Section 56 read with Rule 68	Suo motu by State Govt. or any person including dealer in Form VAT M4	All persons employed in the administration of the Act except an appellate authority, and all dealers affected thereby shall observe and follow such order.	No time limit	Any point relating to levy, assessment and collection of tax.
Uttar Pradesh - Section 59 read with Rule 67	Any Person or dealer (No Form specified)	Except as provided in Section 59 (3) and subject to sections 57 and 58, the order shall be final and binding on all the assessing authorities and appellate authorities.	No time limit	
Punjab - Section 85 read with Rule 89	Any Person (No Form specified)	The Commissioner may direct that the determination shall not affect the liability of any person under the Act, in respect of any sale or purchase, effected prior to the determination.	No time limit	Any other question relating to the procedures and process under the Punjab VAT Act.
Rajasthan - Section 36 read with Rule 73	Any dealer in Form VAT 59	The Commissioner may direct that the determination shall not affect the liability of any person under the Act, in respect of any sale or purchase effected prior to the determination.	No time limit	

A comparison of the provisions of the five states makes it amply clear that there is no uniformity in respect of the grounds on the basis of which clarifications can be sought, the authorities to be approached for seeking clarification and the binding nature of such orders.

The purpose of introducing such provisions was to bring uniformity in the levy, assessment and collection of tax. But different determination procedures have created diversity instead of uniformity across the states resulting in complicating business processes. Will the Goods and Service Tax (GST) bring uniformity across the states?

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