

COURT OF THE ADDITIONAL COMMISSIONER (VAT & IT)
COMMERCIAL TAXES DEPARTMENT, RAJASTHAN, JAIPUR

Present: Shri Har Sahay Meena, IAS

P.5(C)185/TaxRate/ACCT/VAT&IT/10

Date :

Rajasthan State Road Transport Corporation,
Parivahan Marg, Chomu House,
Jaipur
TIN : 08282101467

Date of hearing : 10/02/2010
Date of decision : 10/02/2010

Present on behalf of the dealer :

Shri B.L. Gupta, E.D. Engineer,

Order Under Section 36 of Rajasthan VAT Act, 2003

1. The applicant filed an application U/S. 36 of RVAT Act, 2003 on 30/01/2010 in which the following disputed question of law was raised for determination :

"RSRTC sales condemned Tata & Leyland buses after stripping for all serviceable parts before sale and without Registration or other papers, through public auction. It is to seek determination of tax rate @4%?"

2. In this regard the dealer was given an opportunity of hearing on 10/02/2010 Shri B.L. Gupta, E.D. Engineer, appeared on behalf of the applicant and requested to determine the disputed question of law.

3. The applicant mentioned the notification issued by the Finance Department (Tax Division) No. F.12(84)FD/Tax/2009-46 which is as under:

"In exercise of the powers conferred by sub-section 91) of section 6 of the Rajasthan Value Added Tax Act 2003 (Act No. 4 of 2003) and in supersession of this Department's notification No. F. 12(84)FD/Tax/2009-17 dated July 8, 2009, the State Government hereby provides that notwithstanding anything contained in any notification issued earlier under section 4 of the said Act, the rate of tax with effect from 28.7.2009, in respect of the sale of used motor vehicles specified in column number 2 of the list given below shall be as mentioned against each in column number 3 of the said list, namely:-

Item No	Description of used motor vehicle	Tax payable per unit (in rupees)
1	Motor vehicle where the engine capacity is up to 1000 cc	2000/-
2	Light motor vehicle where the engine capacity is more than 1000 cc	5000/-
3	Heavy motor vehicle	8000/-

4. The applicant also mentioned the notification issued by the Finance Department (Tax Division) No. F.12(28)FD/Tax/2007-170 dated 30/03/2007 import part of is as under:

(ii) *In Column No. 2 against S. No. 144 for the existing expression "used Cars", the expression "used motor vehicles" shall be substituted;*

5. Shri Gupta submits the process of corporation that:

“निगम में संचालित वाहनों के द्वारा अपनी निर्धारित आयु/किलोमीटर पूर्ण करने के पश्चात् जब वाहन मार्ग पर संचालन करने के योग्य नहीं रहता है तो केन्द्रीय कार्यशाला में जमा कराया जाता है। जमा कराए गये वाहन का निरीक्षण नकाराकरण समिति के सदस्यों द्वारा किया जाता है एवं समिति की अनुशंसा के पश्चात् मुख्यालय के द्वारा वाहन को नकारा घोषित करते हुए निगम बेड़े के लेखों से हटा दिया जाता है। वाहन को नकारा घोषित करने के पश्चात् केन्द्रीय कार्यशाला के स्तर पर निम्न प्रक्रिया अपनाई जाती है :

- I. नकारा घोषित वाहन में से उपयोगी टायर, बैटरी, इंजन (मय एफ.आई.पम्प एवं इन्जेक्टर्स-रेडिएटर), गियर बाक्स एवं स्टीयरिंग निकाल लिये जाते हैं।
- II. वाहन के आगे के हिस्से के ग्लासेज, सम्पूर्ण ब्रेक सिस्टम आदि निकाल लिये जाते हैं।
- III. नकारा वाहन के साथ दिये जाने वाले फ्रन्ट एक्सल एवं रियर एक्सल में से सभी उपयोगी पार्ट्स बियरिंग्स आदि निकाले जाते हैं एवं अनुपयोगी/नकारा पार्ट्स/बियरिंग रियर एवं फ्रन्ट एक्सल में लगा कर वाहन को निलामी हेतु निष्पादन विभाग में जमा कराई जाती है।
- IV. नीलामी हेतु तैयार वाहन में इंजन एवं गियर बॉक्स एसेम्बली नहीं दी जाती है।
- V. नीलामी में रखी जाने वाली वाहन किसी भी स्थिति में मार्ग पर संचालन करने योग्य नहीं होती है एवं वाहन से सम्बन्धित परिवहन विभाग के पंजीयन के कागजात भी जिला परिवहन अधिकारी के कार्यालय में जमा करा दिये जाते हैं।
- VI. नीलामी में अधिकतम बोली प्राप्त होने पर वाहन को वाहन क्रेता के द्वारा क्रेन की सहायता से वाहन निगम परिसर से उठा कर अपने परिसर में ले जाया जाता है, वाहन किसी भी स्थिति में मार्ग पर संचालित नहीं हो सकता है।
- VII. वाहन क्रय करने के पश्चात् क्रेता के द्वारा वाहन को पूर्ण रूप से डिसमेन्टल किया जाता है एवं डिसमेन्टल सामान को अलग-अलग मेटल अनुसार (एल्युमिनियम, लोहा, चैसिस मेम्बर, रबड़, प्लाई अनुसार) एकत्रित कर डिस्पोज किया जाता है।

6. The above issue was examined by the Assessing Authority and the Committee of the Department.

7. I have gone through the record, arguments advanced by the learned Authorized Representative of the dealer and carefully gone through the record, facts submitted by the Assessing Authority in his comments as well as opinion given by the State Level Departmental Committee.

8. In Schedule I of RVAT Act entry at S. No. 14 related to fire wood is as under:

S.No.	Description of Goods	Conditions, if any
14	Fire wood except Casuarina and Eucalyptus timber; gobar ke kande and solid briquettes made of agricultural waste.	

In Schedule IV of RVAT Act, entries at S. No. 42, 49, 102 and 146 A related to declared goods, metals and plastic and are as under:

S.No.	Description of Goods	Rate of Tax	Conditions, if any
42	Declared goods excluding pulses and liquefied petroleum gas for domestic use as specified in section 14 of the Central Sales Tax Act, 1956.	4	Vide Notification No. 08-65 dated 06-09-2008
49	Ferrous and non-ferrous metals and alloys, non-metals, such as aluminum, copper, zinc and extrusions of those.	4	
102	Plastic granules, plastic powder, master batches and scrap	4	
146A	Waste paper (raddi), empty bottles, broken glasses and plastics waste	4	

In Schedule IV Part B of RVAT Act, entries at S. No. 235 related to scrap are as under:

S.No.	Description of Goods	Rate of Tax
235	Non-ferrous metal sheet (including foil), circle, wires, strips and scrap.	4

Section 14(iv) of the Central Sales Tax Act, 1956, related to iron and steel (Declared goods mentioned at S. No. 42 of Schedule IV of RVAT Act is as follows:

Section 14. Certain goods to be of special importance in inter-State trade or commerce:

(iv) Iron and steel; that is to say:

- (i) pig iron, sponge iron and cast iron (Including ingot moulds, bottom plates), iron scrap, cost iron scrap, runner scrap and iron skull scrap;
- (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);
- (iii) skelp bars, tin bars, sheet bars, hoe-bar and sleeper bars;
- (iv) steel bars (rounds, rods, squares, flat, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths;
- (v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z-sections or any other rolled sections);
- (vi) sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;
- (vii) plates both plain and chequered in all qualities;
- (viii) discs, rings, forgings and steel castings;
- (ix) tools, alloy and special steels of any of the above categories;
- (x) steel melting scrap in all forms including steel skull, turnings and borings;
- (xi) steel tubes, both welded and seamless, of all diameters and lengths including tube fittings;
- (xii) tin-plates, both hot dipped and electrolytic and tin free plates;
- (xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers-heavy and light crane rails;
- (xiv) wheels, tyres, axles and wheels sets;
- (xv) wire rods and wires-rolled, drawn, galvanized, aluminized, tinned or coated such as by copper;
- (xvi) defectives, rejects, cuttings, or end pieces of any of the above categories;

9. Section 4(1) of RVAT Act 2003 is as under:-

4. Levy of tax and its rate.- (1) Subject to the other provisions of this Act and the provisions of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), the tax payable by a dealer under this Act, shall be at such point or points, as may be prescribed, in the series of sales by successive dealers and shall be levied on the taxable turnover of sale of goods specified in Schedule III to Schedule VI at the rate mentioned against each of such goods in the said Schedules.

10. Section 2(28) of Motor Vehicle Act 1988:

"Motor Vehicle" or "Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with capacity of not exceeding thirty five cubic centimeters.

11. As per the Official website of Transport Department, Government of Rajasthan, <http://www.transport.rajasthan.gov.in/registration.htm>, necessity of registration of a motor vehicle has been enumerated as follows-

किसी सार्वजनिक स्थान में अथवा किसी अन्य स्थान में किसी मोटर यान को कोई व्यक्ति तभी चलायेगा और कोई मोटर यान का स्वामी चलाने की स्वीकृति देगा तब कि वह मोटर यान अधिनियम 1988 एवं उसके अन्तर्गत बनाये गये नियमों के अनुसार रजिस्ट्रीकृत हो।

The above provisions states that a motor vehicle can ply only when it is registered and in the instant case, as per the applicant the vehicle is sold without registration papers.

The ownership of a vehicle is transferred by 3 ways and the essential documents required for transfer includes original registration certificate. According to the Official website norms and process for transfer of ownership is as follows-

नियमानुसार तीन प्रकार से स्वामित्व का हस्तान्तरण हो सकता है-

1. विक्रय से।
2. स्वामी की मृत्यु हो जाने पर उत्तराधिकार से।
3. सार्वजनिक निलामी में वाहन प्राप्त करने या खरीदने से।

The details of norms, documents and forms are enclosed and it reveals that ownership can only be transferred only when original registration certificate is produced and in the instant case the goods are sold without registration papers. Similarly a fitness certificate is also required for every motor vehicle used for transport purpose. The norms and process for fitness is as follows-

फिटनेस सर्टिफिकेट

I आवश्यकता

संबंधित मोटर वाहन द्वारा मोटर वाहन अधिनियम, 1988 एवं इसके अधीन बने नियमों की पूर्ण पालना की गई है और यह मोटर वाहन, परिवहन के लिए सड़क पर ले जाये जाने के योग्य है, इस बाबत परिवहन वाहनों के लिए नियमानुसार फिटनेस सर्टिफिकेट प्राप्त करना अनिवार्य है।

II प्रभावशीलता-क्षेत्र एवं अवधि

फिटनेस सर्टिफिकेट प्ररूप 38 में जारी किया जाता है जो सम्पूर्ण भारत में वैध होगा एवं इसकी प्रभावशीलता नये परिवहन वाहन के लिए 2 वर्ष एवं इसके पश्चात् प्रत्येक 1 वर्ष के लिए (नवीनीकरण कराने पर) होगी।

In the instant case the applicant has stated that the vehicles (buses) are sold after stripping for all serviceable parts. It indicates that the vehicles do not qualify for a fitness certificate also.

The provisions of RVAT Act 2003 are specific and clear in terms of levy of tax and its rate. As per section 4 cited above the tax shall be levied on the sale of goods at the rate mentioned in Schedule III to VI.

12. It seems that the applicant does not sell the goods as motor vehicle as the goods in question are condemned vehicles, and the entry "used motor vehicle" is for such vehicles which are runs on roads and after sale the ownership of the vehicle is also transferred in the records of transport department, therefore in the instant case the tax rate of "used motor vehicle" will not be levied.

13. The applicant sells the Condemned buses in the shape of bus and do not strip it in different parts such as iron scrap, wood, metal, plastic, tyre etc at the time of sale. Condemned buses are not 'Used Motor Vehicle' and also not 'Motor Vehicle' after all process done in described para 5 (I) to (VII) and after all the process the only use of the condemned bus is in scrap. The basic components of condemned buses are ferrous and non-ferrous metal, aluminum, copper, broken glasses, plastic, tyre, ply etc are mainly in Schedule IV of RVAT Act 2003 as discussed in para 8. Hence taxable at the rate of mentioned in Schedule IV.

14. Hence, the disputed question mentioned above is determined as under:

"When RSRTC sales condemned Tata & Leyland buses after stripping for all serviceable parts before sale and without Registration or other papers, through public auction taxable at the rate mentioned under Schedule IV."

Additional Commissioner (VAT & IT)
Commercial Taxes Department,
Rajasthan, Jaipur

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Date : 13.2.2010.

Copy forwarded to the following for necessary action:

1. Commissioner, Commercial Taxes Department, Rajasthan, Jaipur.
2. Additional Commissioner(Legal/Tax), Commercial Taxes Department, Jaipur.
3. Deputy Commissioner (Adm), ,Rajasthan.
4. Deputy Commissioner (I.T.), Jaipur for website.
5. A.C./C.T.O Special Circle I, Jaipur.
6. M/S. Rajasthan State Road Transport Corporation, Parivahan Marg, Chomu House, Jaipur
7. Guard File.

Additional Commissioner (VAT & IT)
Commercial Taxes Department,
Rajasthan, Jaipur