

Analytical Speaking

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VAT on lease and hire purchase transactions in Gujarat

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At some point of time in the past, the instruments of lease and hire purchase fell out of popularity largely because of tax issues. Among tax issues, the major issue was sales-tax, as sales tax on lease and hire purchase transactions amounted to an incremental burden. When VAT laws were introduced, it was largely expected that the incremental burden due to interposition of lease/HP transactions in the chain of procurement of goods will be largely eliminated, as taxes paid at the time of purchase are allowed to be offset against taxes payable on the lease/ HP receivables. However, while that is the true spirit of VAT laws, state laws, apparently without any great philosophy, enacted laws which completely spoil the competitiveness of lease and HP transactions. Lease and HP have been in the doldrums for several years now, but now that they are reviving, it is very important to understand whereall does the pain lie in case of lease /HP transactions.

This article makes a quick review of VAT laws in case of lease and HP transactions in Gujarat.

Section 2(23) of the Gujarat VAT Act, 2003 defines “sale” which includes the “delivery of goods on hire purchase” and the “transfer of the right to use any goods” (i.e. Lease). Here, the definition talks about the delivery of goods in case of HP that implies that a HP will be taken as a sale at the time the goods are delivered.

Further, as per the definition of “sale price” u/s 2(24) of the Act the sale price for the delivery of goods on hire purchase is taken as the amount of valuable consideration payable to a person for such delivery. Going by this, in absence of any specific provision it seems that the whole of the HP price including interest is to be taken as a part of the taxable turnover. Thus, even if the interest is billed separately it is subject to sales tax as a part of sale price. The legal basis for bringing interest as a part of the taxable turnover is that such interest is a part of the consideration for the particular sale contract where such sale takes place by way of HP. Such provision is upheld by the Delhi High Court in *Goodwill India Ltd. vs. The state*, 45 STC 368 while deciding on the identical language in Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi.

The treatment of lease rentals as a part of turnover is usual. But, section 11(5)(mmm) of the Gujarat VAT Act specifically disallows the tax credit for purchases of the goods for which right to use is transferred i.e. for leases. The said sec 11(5)(mmm) was initially not there in the original Gujarat VAT Act but was inserted by the Gujarat Value Added Tax (Amendment) Act, 2006.