

Analytical Speaking

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VAT on lease and hire purchase transactions in Uttar Pradesh

Nidhi Jain

nidhijain@vinodkothari.com

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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 Uttar Pradesh.

Section 2(ac) of Uttar Pradesh VAT Act, 2007 defining “sale” includes the delivery of goods on hire purchase and a transfer of the right to use any goods.

Further, as per 2(q) of the Act, “Lease” means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by installments.

Now, section 3(6) of the UP VAT Act says that for the purposes of this Act, following shall be determined in the prescribed manner which includes inter alia the turnover of sale of goods in cases of transfer of right to use any goods.

Rule 10 of the UP VAT Rules provides for the determination of turnover of sale in cases of transfer of right to use any goods which says that the tax on the turnover of sale which is effected by way of transfer of right to use any goods shall be computed on taxable turnover. For the purpose of determining the taxable turnover of sale of such goods, the amounts specified below shall be deducted if they are included in the gross turnover-

- (a) the amount representing the amount receivable in respect of transfer of right to use any exempt goods;
- (b) amount receivable as penalty for defaults in payments or as damages or any loss caused to the goods by the person to whom such transfer was made;

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- (c) amount receivable in respect of transfer, delivery or supply of goods under the contract or agreement of transfer of right to use goods for any purpose where such transfer, by the lessor to the lessee, is made as a result of a sale–
- (i) in the course of inter-state trade or commerce; or
 - (ii) outside the State; or
 - (iii) in the course of export of the goods out of the territory of India or in the course of import of goods into the territory of India.

Regarding the HP transaction, there is no specific provision. So the amount to be included in the turnover in respect for sale on HP basis is to be determined as per the definition of “sale price”. Section 2(ad) defines "sale price" which means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of goods at the time of or before the delivery of such goods, other than cost of outward freight or delivery or cost of installation in cases where such cost is separately charged.

By virtue of above definition and in the absence of any contrary provisions, the interest portion of the HP installments would suffer VAT.