

Analytical Speaking

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VAT on lease and hire purchase transactions in Kerala

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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 Kerala.

Section 2(xliii) of the Kerala VAT Act defines “sale” that includes Lease and HP. However the definition for HP includes a non obstante clause which says that even if the seller retains the title in the goods as security for payment of the price, the HP is deemed to be a sale. On identical language in Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi, the Supreme Court in the case of *M/S. Jay Bharat Credit and Investments Pvt. Ltd. vs. Commissioner Of Sales-Tax & Anr* on 9th August, 2000 held that the non obstante clause has been added only to emphasize the categorical statement of the law contained in the main clause to the effect that a transfer of goods on hire-purchase, etc., shall be deemed to be a 'sale' even though there may be a stipulation to the effect that in spite of the transfer of goods to the hirer, the owner retains title to those goods until the happening of the ultimate event, namely, completion of title at the option of the hirer.

Section 2(lii) of the Kerala VAT Act defines “turnover” that includes the market price of the goods at the time of delivery in respect of delivery of goods on HP. Here, the Act is not mentioning any thing with respect to interest or option fee. It simply talks about the market price, leaving us in doubt.

The lease rentals are to be taken as “sale price” and they are included in the definition of turnover under sec 2(lii) of the Act. However the benefit of input tax credit is not available to the lessors by virtue of section 11(4) of the Kerala VAT Act. This is again a strange provision since in case of lease, VAT may be imposed at various stages and if the



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input tax credit is not available, it may lead to double taxation on the same goods. No other provisions in the Act or the Rules talks about the Lease or HP.