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Mazgaon, Mumbai-400010

**TRADE CIRCULAR**  
(U/s.10(10) of the MVAT Act, 2002)

To,

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No.VAT/2015-16/OSD-VP/B-  
Trade Circular No. 11T of 2015

Mumbai, dt. 13.07.2015

Sub: Bombay High Court judgment in the case of Tata Sons Ltd, Writ Petition  
No.2818 of 2012 decided on

20.01.2015.

Recently the Bombay High Court in the case of Tata Sons had an occasion to decide as to whether the agreement executed by Tata Sons with the Tata Companies providing detailed guidelines for use of the Tata name and the trade mark will attract tax under the Transfer of Right to use goods for any purposes Act, 1985. In the course of the argument the petitioner had relied upon the judgment of the Hon. Supreme Court in the case of BSNL, especially upon para 79 and 98 of the judgment. As per the petitioner, the trade mark were assigned to multiple companies which meant that there is no transfer within the meaning of the Act. On the other hand, it was argued by the department that the Act of 1985 dealt with the right to use any goods and the words 'exclusive' and 'unconditional' which are being read into this Act by the petitioner are totally absent therein. If the right to use the trade mark is transferred then the Act applies and it does not necessarily mean that the trade mark is itself transferred or assigned. It was also argued there could be multiple transfers of right to use and in such circumstances also when the Act does not contemplate cession of user by the transfer or, then, levy cannot be avoided.

The High Court, upon a perusal of the provisions and the agreement observed that in case of intangible goods the right to use them is capable of being transferred and if transferred it may be subjected to tax. The Act does not given any indication that right to use the incorporeal goods should be exclusive transfer in favor of the transferee.

It observed,“

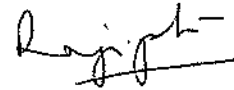
...Upon perusal of the entire Act and reading these provisions together and harmoniously, we are in agreement with Mr. Kumbhakoni that the deal or transaction between the petitioners and the subscribers envisage that a transfer of a right to use the goods and which could be said to be the marks as well. Upon a conjoint reading of the provisions of the Act we are of the opinion that in the case of intangible/incorporeal goods the right to use them is capable of being transferred and if transferred it may be subjected to tax. The Act does not give any indication as is rightly urged before us that the right to use the incorporeal /intangible goods should be exclusively transferred in favour of the transferee. The nature of the transfer or the nomenclature assigned to the act of will therefore not necessarily be decisive.

Further, it observed,

“We have referred to the clauses in the agreement between the petitioner NO.1

petitioners that the right to use is not transferred. However their argument is that it is not exclusive but conditional. Secondly, it is clear from the clauses of the agreement that the proprietor continues to control even the limited right conferred by the above clauses in favour of the subscribers. We are of the opinion that so long as the agreement transfers the right to use intangible goods which are the trade marks in this case, then, there is no question of the petitioners escaping the consequences of the enactment. The enactment and the definitions which we have referred together with the substantive provisions does not envisage exclusive and unconditional transfer to the above right."

The High Court distinguished the remarks of the Supreme Court in the case of BSNL. The observation of one of the three judges bench of the Supreme Court in the case of BSNL was that in order to attract levy under transfer of right to use goods, the transfer has to be to the exclusion of the transferer and once the right to use the goods is transferred the owner again cannot transfer the right to others. This observation led to the conclusion that there cannot be transfer of right to use trade mark, copy rights and technical know how and other intangibles to multiple users. However, the High Court has put to rest the controversy and has comprehensively held that even when there is transfer of right to use goods to multiple users it would attract tax under the MVAT Act. It further held that Bombay High Court judgment in the case of Dukes and Sons Ltd is still good law. The law is therefore now settled that VAT can be levied on transfer of right to use goods of intangible nature i.e. trade mark, technical know how, copy right and other intangibles etc even if it is transferred to multiple users.



(Rajiv Jalota)

Commissioner of Sales Tax,  
Maharashtra State, Mumbai.

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Mumbai, dt. 13.07.2015

Copy forwarded to:

Joint Commissioner of Sales Tax (Mahavikas) with the request to upload this Trade Circular on the Departments web-site.

Yours faithfully



Vishakha Borse

OSD to Commissioner of Sales Tax,  
Maharashtra State, Mumbai.