

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

Before Sri Binod Kumar, I.A.S., Commissioner, Sales Tax, West Bengal

In the matter of :

An application filed under section 102 of West Bengal Value Added Tax Act, 2003, read with rule 202 of the West Bengal Value Added Tax Rules, 2005.

- And -

In the matter of :

Case No: 24X/PRO/VAT/15/266

- And -

In the matter of :

M/s Sony India Private Limited, carrying on business under the same trade name at PS Arcadia Central, 5th Floor, Plot No. 4A, Abanindra Nath Thakur Sarani (Camac Street), Kolkata-700017

Present for the applicant: Sri Souradipta Saha, Advocate, Sri Tapas Paul and Ms. Akanksha Agarwal, employee and authorised representatives of the applicant Company.

Sri Adesh Kumar, Additional Commissioner, Commercial Taxes/Sales Tax, and Public Relations Officer (PRO) of the Directorate of Commercial Taxes, was also present to assist in the matter

Date of order: 12.04.2016

This is an application filed by M/s Sony India Private Limited through Sri Gaurav Taneja, Regional Commercial Manager, hereinafter referred to as applicant, under section 102 of the West Bengal Value Added Tax Act, 2003, hereinafter referred to as the VAT Act. The applicant holds VAT Registration No./ TIN 19200096096 and has raised a question for determination of rate of tax applicable to the sale of Play Station Game Software (Game Software).

The applicant has duly affirmed that the dispute has not arisen out of any order passed by any authority and that he has not filed any application before any Court, Tribunal, Board or any authority under the VAT Act, praying for determination of a dispute of similar nature referred to in this application.

Sri Souradipta Saha, Advocate, submitted that 'IT software on any media' has been mentioned under entry at serial No. 14 of Part II of Schedule C of the VAT Act. He adds that software has neither been defined under the VAT Act nor under the Information Technology Act, 2000 (IT Act). The term "information" has, however, been defined under section 2(1)(v) of the IT Act as under:

"information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche;"

Ms. Akanksha Agarwal, employee and authorised representative of the applicant, made a written submission and added that IT software has been defined by the Parliament under Service Tax legislation under section 65B(28) of the Finance Act, 1994, as under:

"information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment"

Ms. Akanksha Agarwal submitted that 'Game Software' in question satisfies all the essential ingredients of being an 'Information Technology Software', which are:

- 1.a) software comprises of instructions, data, sound or image which includes source code and object code;
- 1.b) these are recorded in machine readable form;
- 1.c) software is capable of either being manipulated or providing interactivity to a user;
- 1.d) the software should be capable of use by means of a computer or automatic data processing machine or any other device or equipment.

She further added that 'game software' dealt in by them-

- 1.a) comprises of instructions, data, sounds and images, including the source code and object code which, when run by the Play Station, allow the user to play games when connected to an audio-visual medium such as a television or a computer monitor;
- 1.b) is capable of being read by the machine for which it is intended, i.e., in the present case, the Play Station console;

- 1.c) is capable of providing interactivity to the user. Typically, while playing a game using the Game Software, the user is able to input data, like inserting name of the player playing the game, also making selections, such as choosing number of players, selecting whether user is playing against the computer or against another user, choosing an image for the player, choosing background music, etc.
- 1.d) is capable of being used with the Play Station, which is a video game console, which satisfies the definition of being a ‘device’ or ‘equipment’.

Sri Adesh Kumar, PRO, stated that entry at serial No. 14 of Part II of Schedule C of the VAT Act is as under:

Serial No.	Description	HSN Code
14.	IT <i>software on any media.</i>	85.24

He added that Information Technology software was covered under Harmonised System of Nomenclature (HSN) Code 8524 and game software meets the requirements of IT software.

The matter is examined. The submissions made by the representatives of the applicant, including written submission, are considered and item enumerated at serial of 14 of Part II of Schedule C of the VAT Act is perused.

It is true that IT software has not been defined under the VAT Act as such recourse is taken to the common parlance meaning of the goods and how it is dealt in at market place. Definitions of ‘Information’ under the Information Technology Act, 2000, and that of the “information technology software” under the Service Tax legislation also provide important guideline to understand the goods in question.

There is no doubt that ‘Play Station Game Software’ or simply ‘Game Software’ is a software and is traded at market place as a type of software. Further, it represents instructions, data, sound or image in a machine readable form. It is capable of being manipulated by the user and also provides interactivity to the user through a computer or other devices like game console. All these characteristics make the goods in question an Information Technology software.

In view of the above discussion the goods namely, 'Play Station Game Software' ('Game Software') is held to be covered under entry at serial No. 14 of Part II of Schedule C and sales thereof in West Bengal is held to be taxable at the rate of 5 % under section 16(2)(b) (ii) of the West Bengal Value Added Tax Act, 2003.

Application filed under section 102 in the instant case stands disposed of as above. Send a copy of this order to the applicant for information.

Sd/-
(Binod Kumar)
Commissioner,
Sales Tax, West Bengal