

SANGHVI MOVERS LIMITED

Regd. Office : Survey No. 92, Tathawade,
Taluka - Mulshi, Pune, Maharashtra - 411 033, INDIA.
Tel. : +91-20-66744700 Fax : +91-20-66744724
E-mail : sanghvi@sanghvicranes.com
Web : www.sanghvicranes.com
CIN No. : L29150PN1989PLC054143



REF: SML/SEC/SE/15-16/17

Date: 19th June 2015

Bombay Stock Exchange

Corporate Relationship Department
1st Floor, Rotunda Building,
B. S. Marg, Fort,
Mumbai - 400001

By Email / Courier

Kind Attn.: Ms. Pooja Sanghvi - Relationship Manager

Ref: Code No. 530073

National Stock Exchange of India Limited

Exchange Plaza
Bandra Kurla Complex
Bandra East
Mumbai - 400051

By Email / Courier

Kind Attn.: Mr. K. Hari - Asst. Vice President

Symbol: SANGHVIMOV

Dear Madam/Sir,

Sub: - Intimation about receipt of Demand from Asst. Commissioner of Sales Tax Pune

This is to inform you that the company has received Notice of Demand on 25th May 2015 from Asst. Commissioner of Sales Tax (PUN-INV-D-007) Pune in respect of Order of Assessment of Tax under Central Sales Tax, 1956 for Financial Year 2008-09, towards VAT liability under CST Act for Rs. 37.33 Crores, Interest of Rs. 36.40 Crores and Penalty of Rs. 37.33 Crores aggregating to Rs. 110.06 Crores regarding "transfer of right to use the goods".

Further the company has received Notice of Demand dated on 25th May, 2015 from Asst. Commissioner of Sales Tax (PUN-INV-D-007) Pune in respect of Order of Assessment of Tax under MVAT Act, 2002 for Financial Year 2008-09 towards VAT liability under MVAT Act for Rs. 3.08 Crores, Interest of Rs. 3.00 Crores and Penalty of Rs. 3.08 Crores aggregating to Rs. 9.16 Crores regarding "transfer of right to use the goods".

The company is in the process of contesting the aforesaid demands before the Deputy Commissioner of Sales Tax (Appeals). The Management based on its internal assessment, legal advice and / or various Judgment and decisions given by various Courts in respect of similar matters, is confident that the cases will be decided in the Company's favour. The Management feels that it has a strong case in view of the following grounds -

1. The company is paying the service tax on consideration received by it for crane services under the category of "**Supply of Tangible goods**" in terms of section 66E (f) of Finance Act, 1994. Finance Act 2008 has introduced, a new category of service which would be subjected to levy of service tax and it is categorized under **supply of tangible goods** for use. This category has been introduced with effect from 16.05.08 and is another instance where a transaction of supply of goods is sought to be subjected to



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service tax levy where there is no transfer of possession and control of the equipment in favour of the customer. Further reliance is placed on, Education Guide to Service Tax 2012 issued by Department of Revenue, Ministry of Finance Government of India, New Delhi wherein it is clearly mentioned that "Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. 'Transfer of right of goods' involves transfer of possession and effective control over such goods in terms of the judgment of the Supreme Court in the case of State of Andhra Pradesh vs Rashtriya Ispat Nigam Ltd [Judgment dated 6/2/2002 in Civil Appeal no. 31 of 1991]. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control."

Page No. 90 of the said Education Guide clearly states that supply of equipments like excavators, wheel loaders, dump trucks, CRANES etc., for use in a particular project does not involve transfer of right to use such equipments and therefore for such transactions Service Tax is applicable.

2. The management also strongly believes that considering the nature of its business (i.e. rendering Crane services on rental business) and the type of cranes that company owns which is given on rental basis does not involve "**transfer of right to use goods**" so as to fall under the purview of MVAT Act as the company never pass the effective control and possession of its cranes to its customer and therefore question of levying of VAT does not arise at all.
3. The company management, to substantiate its stand, is relying on following landmark judgments delivered by Supreme Court, High Courts and Various Tax Tribunals and have also submitted these case laws to the Sales Tax Department -

- a. Rashtriya Ispat Nigam Limited v/s State of Andhra Pradesh [1990]77STC182(AP)

In this case the company had given machines to the contractor for executing the specified work. The Court held that the transaction did not involve transfer of right to use the machinery in favour of the contractor since the effective control over the machinery was maintained by company even while the machinery was in use of the contractor. The aforesaid judgment is upheld by the Hon'ble Supreme Court in State of Andhra Pradesh and Anr. v/s Rashtriya Ispat Nigam Ltd. 2002 (3) SCC 314.

- b. Further, the management is relying on the judgment of Bombay High Court in the matter of **The Commissioner of Sales Tax Vs General Cranes** (Sales Tax Reference 5 of 2009 in Reference Application No. 72 of 2005) judgment dated 21st April, 2015 wherein the Division bench held that "*there was no transfer of right to use so as to term the said acts within the meaning of the Act to make it taxable. The court, therefore, found that the show cause notice issued was without jurisdiction and as such, allowed the petition, setting aside the said show cause notice*".

- c. W.B. Crane And Equipment Owners Welfare Association And Others v/s Asstt. STO (2013) (64 VST 435)

The management is relying on the judgment of West Bengal Taxation Tribunal wherein its judgment dated 3rd February, 2012 Hon'ble Tribunal observed that "*hire of cranes where effective control of machinery even while under use remaining with*



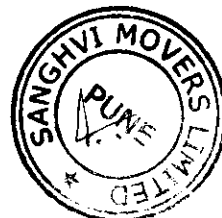
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owners and contractor, is not free to make use of machinery for other works or move the machinery and owners are responsible for the custody of machines while on site then no transfer of right to use goods and no liability to VAT."

- d. M/s. S. K. Dhondy and Co. Versus the State of Maharashtra, (Case law No. 81 of 1995 decided by Fourth Bench of Maharashtra Sales Tax Tribunal at Mumbai on 22nd March 2002) Further the facts our case are similar with this case wherein it has been held *"In the appellant's case, entire crew supplied by the appellant. Tug is at the administrative control of S. K. Dhondy. Only directions regarding operation purposes with the hirer. The entire maintenance and repairs etc. were to be borne by the appellant, at the most effective control was with the appellant. Further, In this case it has to be seen whether the hirer is having freedom and choice of selecting the matter, time and nature of use and enjoyment within the frame work of the agreement. It would found that in appellant's case the goods is being used for a particular area only and the hirer is not entitled to take the tug outside that particular area. Therefore, it is clear that the hirer is not having effective control or possession of the tug and general control and possession of the tug lies with the appellant. Therefore, we are of the view that the transaction effected by the appellant to the hirer will not be a sale as defined under the Act as there is no transfer of right to use the goods."*
- e. Furthermore the reliance is made on the judgment of Tripura High Court in the matter of Quippo Oil and Gas Infrastructure Limited and Ors. Vs. State of Tripura (2015)77VST547(Tripura) (W.P. (C) No. 315 of 2010, 277 and 278 of 2011) decided on 03.11.2014 wherein it is held that;
- i) *"Parties have also been paying service tax and if the State is allowed to tax any portion of the value of the contract then there has to be a proportionate refund of the service tax to that extent. This cannot be done without hearing the Union of India. If there is any dispute between the State or the Union of India then they must resolve it between themselves. The petitioners cannot be made liable to pay both the taxes for the same transaction.*
- ii) *As has been held by the apex court either a transaction shall be eligible to sales tax/VAT or it shall be eligible to service tax. Both the taxes are mutually exclusive. Whereas sales tax and value added tax can be levied on sales and deemed sales only by the State, it is only the Central Government which can levy service tax. No person can be directed to pay both sales tax and service tax on the same transaction. The intention of the parties is clearly to treat the agreement as a service agreement and not a transfer of right to use of goods. We are also clearly of the view that it is impossible from the terms of the contract to divide the contract into two portions and since the petitioners have paid service tax they cannot be also asked to pay value added tax. As held by the Delhi High Court in Commissioner, VAT, Trade and Taxes Department v. International Travel House Ltd. MANU/DE/2288/2009 : [2009] 25 VST 653 (Delhi), if there is a conflict between the Central law and the State Act then the Central law must prevail. The petitioners cannot be burdened with two different taxes for the same transaction.*



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4. The management also believes that the company falls within the ambit of the Exception III of Section 2(8) of the MVAT Act, 2002, the definition of "Dealer" which exempts —A transporter holding permit for transport vehicles (including cranes) from the definition of "Dealer". Since the Company is carrying on the business of crane services therefore, the company is not "dealer" as contemplated under Section 2(8) of MVAT Act, 2002 and therefore question of levy of MVAT does not arise at all.
5. The company is transacting same business in the State of Karnataka. Even Karnataka Sales Tax Authority has passed the regular sales tax assessment orders wherein they have taken a view that hiring of cranes does not amount to "transfer of right to use" hence it is not subject matter of KVAT.
6. Assuming in worst case scenario that Tax authority holds that, our activity is covered by MVAT and CST then also we are relying on the Karnataka High Court Judgment in **Essar Telecom Infra Pvt. Ltd. V/s Union of India and Others** 2012(275)ELT167(Kar.), 2012[25]S.T.R.16, [2012]35STT453, (2012) 52VST306(Karn) wherein it was held that;

".....So far as imposition of penalty is concerned, of course penalty or interest thereof cannot be imposed as, in the usual course Petitioner having exercised his bonafides, having registered under the Service Tax, went on paying service tax. For the assessment years in question, the amount is paid by the Petitioner to the 1st Respondent and it is for the State to seek for recovery of the amount so paid by the Petitioner to the 1st Respondent in a separate proceedings based on the judgment rendered herein. Further, in future, it is for the Petitioner to file returns/assessment under the provisions of Section 3 and 4(1b) of the VAT Act, 2003.

23. Petitions are allowed in part while upholding the assessment orders passed, so far as recovery of the amount which is legally due to the State, the State can very well have recourse to recover from the 1st Respondent Union. However, the differential amount if any to be paid, be adjusted from the amount already deposited by the Petitioner and, if there is any excess amount remaining, the same be refunded to the Petitioner."

Based on the above explanations and Judgment and decisions given by various courts in respect of similar matters, the Management is confident that the cases will be decided in the Company's favour.

Since this could be a price sensitive matter, we have included our stated legal position in this regard in the disclosure itself. Keeping in view that obtaining legal advice entails the passage of a reasonable time, the Company can be said to have discharged its obligation of promptly reporting the same. A copy of the same is also being posted in the official website of the Company.

This is for your information & records.

Thanking you

For Sanghvi Movers Limited

R. P. Likhite

Rajesh Likhite

Company Secretary & Chief Compliance Officer

