

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE
AUTHORITY FOR CLARIFICATION AND ADVANCE RULING**
(Under Section 48-A of TNVAT Act, 2006)

**Present: 1. Thiru. Shiv Das Meena, I.A.S.,
Commissioner of Commercial Taxes,
2. Thiru. R. Chandramohan, M.A.,
Additional Commissioner (PR)
3. Thiru. E. Rathinasamy, M.Sc., B.L.,
Additional Commissioner (RP) (FAC)**

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A.C.A.R 34/ 2011-12
D.Dis.Acts Cell II/3807/2012

Dated 15.05.2012

Ref: Application of Tvl.Indus Towers Limited, No.5 (NP), Espee IT Park, 5th Floor, Jawaharlal Nehru Road, Ekkattuthangal, Chennai - 600 097 dated

ORDER

Tvl.Indus Towers Limited, No.5 (NP), Espee IT Park, 5th Floor, Jawaharlal Nehru Road, Ekkattuthangal, Chennai - 600 097. (TIN: 33560803089) have filed an application and sought clarification under section 48-A of TNVAT Act, 2006, read with rule 12-A of TNVAT Rules, 2006.

2. They sought clarification on the following in column 4 of Form 'VV':

"Passive Telecom Infrastructure".

3. The issue has been examined in detail with reference to provisions of the TNVAT Act and Rules.

4. In accordance with the decision taken by the authority in the meeting held on 29.03.2012, Thiru S Thirumalai, Authorised Representative appeared in person on 23.04.2012 for the personal hearing and for submission of additional facts.

5. The Authorised Representative put forth his contention that the applicant is engaged in providing Passive Infrastructure Services to the clients which subsume Telecom Operators in India on a shared basis and charges for telecommunication network support services are collected by

them. The Authorised Representative raised two points for clarification as below:

- i) Whether in the facts and circumstances, the provision of Passive Infrastructure Services by the applicant to sharing operators would tantamount to "Transfer of right to use goods" as per section 2(33) of the Tamil Nadu Value Added Tax, 2006 and therefore become liable to tax under the TNVAT Act.
- ii) If the answer to the above is in the affirmative, then how should the sale price under TNVAT Act be determined and on what basis for the purpose of discharging the liability under TNVAT Act

6. The applicant is engaged in providing Passive Infrastructure services to clients which subsume telecom operators in India on a share basis. The term "**Passive Infrastructure services**" refers to providing access to the telecommunication operators (on a shared basis) of telecommunication sites owned, acquired, possessed and controlled by the applicant which includes tower, shelter, diesel generator sets, air-conditioners, electrical and civil works, DC power system, battery bank etc.,

Further the term "providing access to telecommunication operators" refers to making the passive infrastructure available to the telecommunication operators for the purpose of deploying their equipments such as base terminal station equipment, associated antenna, base transceiver station, backhaul connectivity to sharing operator's network and other requisite equipments and associated civil or electrical work required to provide telecommunication services by the sharing operators to its customers. In order to provide passive infrastructure services the applicant also enter into master services agreement with the clients.

7. The applicant sought clarification on "**Passive Telecom Infrastructure**". The applicant during the course of hearing, explained that they are rendering services only to the clients and also charging service tax in terms of the Finance Act, 1994 under the category of Support Service of Business or Commerce on the entire consideration received for providing passive infrastructure services to the sharing operators

8. The Tamil Nadu Value Added Tax (Second Amendment) Act, 2011 came into force on 27.09.2011, by inserting a new section 48-A for the constitution of a State Level Authority for Clarification and Advance Ruling to clarify any point concerning the rate of tax.

9. From the details furnished by the applicant it is seen that the issue raised by the applicant has nothing to do with clarification on rate of tax for any specific commodity as provided under section 48-A of TNVAT Act read with rule 12-A of TNVAT Rules, 2006.

10. The ruling is that, the request of the applicant does not fall under the provisions contained in Section 48-A of TNVAT Act, 2006 and therefore their request is not capable of compliance as provided under Section 48-A of TNVAT Act, 2006.

Sd/- R.Chandramohan
Additional Commissioner (PR)

Sd/- E. Rathinasamy
Additional Commissioner(RP)(FAC)

Sd/- Shiv Das Meena,
Commissioner of Commercial Taxes

To
Tvl.Indus Towers Limited,
No.5 (NP), Espee IT Park,
5th Floor, Jawaharlal Nehru Road,
Ekkattuthangal, Chennai – 600 097.

Copy to:

Assistant Commissioner (CT). Luz Assessment Circle.

Joint Commissioner (CS) **To host in Department Website**

The Secretary to Government, Commercial Taxes and Registration

Department , Secretariat, Chennai – 9.

All Joint Commissioners (CT), including Enforcement, LTU, MOU and ISIC

The State Representative, Sales Tax Appellate Tribunal, Chennai-104

The Addl. State Representative, (AB) Chennai, Madurai and Coimbatore

The Director, CTSTI, Greams Road, Chennai-6.

The Executive Officer, Traders Welfare Board, Chennai-5.

The Accountant General (Audit)-II, No.44, Greams Road, Chennai-6.

The Deputy Commissioner (CT), Zone-VI, Chennai

All Additional Commissioners, Deputy Commissioners, Assistant Commissioners,
Commercial Tax Officers in CCT 's Office

Personal Clerk to the CCT

Stock file / Acts Cell II / Spare-5

//forwarded by order//


Commercial Tax Officer
17/05/12