

From

Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All the Dy. Excise & Taxation Commissioner (ST).
in the State of Haryana.Memo No. **825** /ST-1,
Panchkula, dated the **4/6/10****Subject :- Circulation of Clarification-M/s Dimpy Pumps Pvt. Ltd., E-10, Old Industrial Area, Bahadurgarh (Haryana) TIN No.06121706216.****MEMORANDUM**

A copy of clarification order issued by Government under section 56(3) of Haryana Value Added Tax Act, 2003 sought by M/s Dimpy Pumps Pvt. Ltd., E-10, Old Industrial Area, Bahadurgarh (Haryana) is sent herewith for information and necessary action by all the concerned.

On 4/6/10
Superintendent (Sales Tax)

for Excise & Taxation Commissioner, Haryana.

Endst. No. **826** /ST-1, Panchkula, dated the **4/6/10**

A copy alongwith copy of clarification is forwarded to the following for information and necessary action :-

Regd.

1. Sh. Yogesh Narain M/s Dimpy Pumps Pvt. Ltd., 71, Shradha Nand Marg, Delhi.
2. Addl. Excise & Taxation Commissioner, Haryana Institute of Public Administration, 76 HIPA Complex, Sector-18, Gurgaon.
3. Jt. Excise & Taxation Commissioner (Division/Range) Ambala, Faridabad, Gurgaon and Hisar.
4. All Joint. Excise & Taxation Commissioners (Appeals) in the State of Haryana.
5. Senior Deputy Accountant General (Audit), Haryana, Chandigarh.
6. Dy. Excise & Taxation Commissioner (Vigilance), Haryana Vigilance Bureau, Sector - 6, Panchkula.

On 4/6/10
Superintendent (Sales Tax)

for Excise & Taxation Commissioner, Haryana.

Endst. No. **827** /ST-1, Panchkula, dated the **4/6/10**

A copy alongwith copy of clarification is forwarded to the following in the Head Office for information and necessary action :-

1. All Addl. Excise and Taxation Commissioners
2. Flying Squad Officer
3. All JETCs
4. Jt. Director (L)-I and II
5. DETC(ST)
6. CAO
7. ETO(C/Excise)
8. AO-I, II, III
9. DA-I and II
10. DDA-I & II
11. Superintendent (C) for sending E-mail to all the DETC(ST) and uploading on website.
12. ST-II only (For adding in Annual Sales Tax Circular, 2009).

On 4/6/10
Superintendent (Sales Tax)

for Excise & Taxation Commissioner, Haryana.

**ORDER OF CLARIFICATION MADE BY SH. RAMENDRA JAKHU,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56 (3) OF THE
HARYANA VAULE ADDED TAX ACT, 2003.**

Querist: M/s Dimpy Pumps Pvt. Ltd

Subject: Clarification u/s 56 (3) of the Haryana VAT Act - M/s Dimpy Pumps Pvt. Ltd., E-10 Old Industrial Area, Bahadurgarh (Haryana) holding TIN No. 06121706216

M/s Dimpy Pumps Pvt. Ltd., E-10 Old Industrial Area, Bahadurgarh, is a dealer registered under Haryana VAT Act holding TIN No.06121706216 and has sought clarification u/s 56(3) of the Haryana VAT Act as to whether the orders for supply, erection, testing and commissioning of diesel generating sets or pumping sets to a Government or semi Government departments are in the nature of supply orders viz sale orders or work contract orders, and rate of tax involved on supplies made under such orders. Further queries raised by the applicant firm are whether they can purchase the generating sets or pumping sets or any other machinery against 'C' form by paying CST and whether the applicants' liability ends by paying 4% tax on total value of contracts.

The applicant firm executes Government or semi Government work orders for supply, erection, testing and commissioning of diesel generating sets or pumping sets. Hon'ble Supreme Court of India in the case of **Hindustan Shipyard Ltd. Vs. State of Andhra Pradesh [2000] 119 STC 533 (SC)** has laid down clear guidelines to ascertain whether an 'activity' is a transaction of sale or works contract. The Apex Court has observed that if the thing to be delivered has any individual existence before the delivery as the sole property of the party who is to deliver it, then it is a sale. If 'A' transfers property for a price in a thing in which 'B' had no previous property, then the contract is a contract for sale. On the other hand where the main object of the work undertaken by the payee of the price is not the transfer of chattel qua chattel, the contract is one for work and labour. Further, Hon'ble Supreme Court of India in its landmark judgment in case of **State of AP Vs. Kone Elevators India Ltd. (2005) 140 STC 22 SC** has held a contract of supply and installation of lift manufactured and brought to the site in knocked down state as a contract of sale and not works contract. In view of these landmark judgments by Hon'ble Supreme Court of India the orders for supply, erection, testing and commissioning of diesel generating sets or pumping sets to Government or semi-Government Departments and even to private parties are in nature of

sale and accordingly attract VAT at the rate leviable on sale of such goods under the Haryana VAT Act viz @12.5% on sale of diesel generating sets. As per provisions of Haryana VAT Act a dealer can purchase the goods for resale against form 'C' and accordingly a dealer can purchase generating sets or pumping sets or any other machinery against form 'C' for resale. As to the liability of the selling firm, his liability extends to the rate of tax leviable under Haryana VAT Act on sale of such goods and his liability does not end by paying 4% tax on total value of the contract. Matter is clarified accordingly.



(RAMENDRA JAKHU)

Chandigarh
Dated:

Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise and Taxation Department.