

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES :::: ASSAM ::: KAR BHAWAN
DISPUR, GUWAHATI.

ORDER
Dated Dispur, the 11th June, 2012

No. CTS-78/2007/376 M/s Trade & Agencies, SRCB Road, fancy Bazar, Guwahati has filed an application under Section 105 of the Assam Value Added Tax Act, 2003 seeking clarification on the following questions :-

- (1) Whether Recharge Coupon (Vouchers) and Electronic Recharge (E-Recharging) are taxable under the AVAT Act, 2003 ?
- (2) If taxable, who is liable to pay tax under the Act ?

Sunil Kr. Saraf, proprietor, appeared and filed his submission. He submitted that –

- (i) As per the major supplier (BSNL, BAL, Reliance, Vodafone, Idea etc.) collection of the aforesaid does not amount to sale of goods as per the decision of the Hon'ble Supreme Court in the case of "Bharat Sanchar Nigam Ltd. Vs. Union of India (2006) 145 STC-91 (SC)" and State of Andhra Pradesh Vs. BSNL decided by the Hon'ble Andhra Pradesh High Court on 8th day of September, 2011 in Tax Revision Cases No. 53 of 2007 etc. and Writ Petition No. 18723 of 2007 etc.
- (ii) A recharge voucher is a memorandum on a small card or piece of paper containing certain digital arrangements or a number or a PIN. It is merely an operational instruction given by the service provider to the subscriber to enable him to extend his talk time/validity of the connection period. The purpose for which recharge vouchers are issued is that the number printed on it is used to access the network of the service provider. Except for this purpose and use, the recharge voucher has no other utility. The subscriber, after purchasing the recharge voucher, scratches the silver/black panel to view an 18 digit secret code, then dials a particulars number from his cell phone, and enters the 18 digit secret code. This provides his access to the network of the service provider. As soon as the secret code is entered through the cell phone, the recharge voucher slip becomes useless.

The recharge voucher is only a means for accessing the service provider's network, and does not constitute a separate sale of "goods". The intention of the parties, in the sale and purchase of recharge vouchers is merely to provide, and gain, access to the network of the service provider, and extend the talk time or the validity period of the connection.

And therefore

The "dominant intention test" would apply and, as the very purpose of purchase and sale of the recharge vouchers is for extension of the talk time or the validity period which it represents and not for the "paper" or "card" on which it is printed.

He also submitted a copy of judgement and order of Punjab and Haryana High Court which is perused.

In the case of Bharat Sanchar Nigam Ltd v/s Union of India, Hon'ble Court held that electric magnetic waves or Radio frequencies are not "goods" within the meaning of the word either in Article 366(12),366(29A)(d) or in the State legislations. Hon'ble Court in the case of Escotel Mobile Communications Ltd. v/s. Union of India held that the activation charges would not constitute goods and, therefore, to that extent it cannot be considered as 'sale'. It is found that recharge voucher or e-recharge is only a means for assessing the service provider's network and does not constitute a separate sale of "goods". It is, therefore, clarified that recharge coupon and electronic recharge are not taxable under the AVAT Act, 2003.

Sd/- Dr. J.B. Ekka,
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-78/2007/376-A

Dated Dispur, the 12th June 2012.

- Copy to :
1. The Principal Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6 for favour of kind information of the Government.
 2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes(All) for information.
 3. The Deputy Commissioner of Taxes (All) for information.
 4. The Assistant Commissioner of Taxes, Superintendent of Taxes(all) for information.
 5. M/s Trade & Agencies, SRCB Road, fancy Bazar, Guwahati, for information


(R.D. Borah),

Joint Commissioner of Taxes, Assam,
Guwahati-6.


11/6/2012