

**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/15/256

- And -

In the matter of :

M/s Hewlett-Packard Sales Private Limited, carrying on business under the same trade name at DLF IT Park, Block-AF, Tower-C, 1st Floor, 8, Major Arterial Road, New Town, Rajarhat, Kolkata – 700156.

Present for the applicant: Sri Achintya Bhattacharya, Advocate

Sri Adesh Kumar, Public Relations Officer (PRO) of the Directorate of Commercial Taxes, was also present to assist in the matter

Date of order: 09.11.2015

This is an application filed by Hewlett-Packard Sales Private Limited, (hereinafter referred to as the applicant) under section 102 of the West Bengal Value Added Tax Act, 2003 (hereinafter referred to as VAT Act). The applicant has raised a question for determination of the rate of tax applicable to the Annual Maintenance Contract (AMC) involving development, upgrade and maintenance of pre-existing software, as per Table laid down under rule 30(2) of the West Bengal Value Added Tax Rules, 2005.

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.

The applicant is engaged in the import and sale of Information Technology software in the State of West Bengal and also undertake development, upgrade and maintenance of pre-existing software. Under comprehensive AMC the applicant provides necessary software upgrade and support services to the customer.

Sri Achintya Bhattacharya, authorised Advocate of the applicant submitted that for determination of taxable contractual transfer price and rate of tax thereof newly inserted entry at serial No. 20C in the Table under rule 30(2) should cover AMC involving development, upgrade and maintenance of pre-existing software.

The matter is examined. Software is goods. IT software on any media is enumerated at serial No. 14 of Part II of Schedule C of the VAT Act and sales thereof is taxable @ 5% under section 16(2)(b)(ii) of the Act. A computer in order to be operative requires hardware as well as software and any comprehensive AMC thereof involving transfer of property in goods would fall under the ambit of works contract.

Table given under rule 30 sub-rule (2) of the West Bengal Value Added Tax Rules, 2005, was amended by inserting the following item at serial No. 20C, vide Notification No. 523-F.T. dated 02.04.2015, with effect from the 1st day of April, 2015, as follows:

Sl. No.	Type of contract	Deduction towards labour, service and other like charges at the rate of	Percentage of the balance intra-State contractual transfer price after deduction as in clause (i) above, taxable at the rate of	
(1)	(2)	(3)	(4)	
		Per centum	5 per centum	14.5 per centum
20B			
20C	Annual maintenance contract of any equipment including computer	40	20	40
21			

Any development, upgrade and maintenance of pre-existing software is undoubtedly a works contract and for those opting to determine taxable contractual transfer price and pay tax as per Table given under rule 30 sub-rule (2) of the West Bengal Value Added Tax Rules, 2005, annual maintenance contract involving development, upgrade and maintenance of pre-existing software will fall under the ambit of item No. 20C of the said Table.

Application filed under section 102 in the instant case stands disposed. Inform the applicant accordingly.

Sd/-9/11/15
 (Binod Kumar)
 Commissioner,
 Sales Tax, West Bengal.