

Tax Hotline

November 16, 2004

CANNED SOFTWARE REGARDED AS GOODS, HELD LIABLE TO SALES TAX

A recent ruling pronounced by the Supreme Court, the apex court of India, sets at rest the ongoing controversy regarding the applicability of sales tax on sale of Off-the-Shelf Software Packages/Canned Software/Shrink Wrap software. The question before the apex court in the case of Tata Consultancy Services ("**Appellant**") was whether intellectual property contained in media such as floppies, disks, CD-ROMS, magnetic tapes, or similar medium could be held to be "goods" and hence subject to sales tax.

In this case, the Supreme Court held that though software may be an intellectual property, such intellectual property contained in a medium, which can be bought and sold, would be treated as "goods", and hence subject to sales tax. While examining the issue, the Supreme Court discussed the definition of "goods" under various Indian enactments, and acknowledged that its meaning is wide enough to cover software contained on any medium. Additionally, the judgment also enumerates various Indian and international cases relied upon by the Appellant and the income tax authorities. Further, it was also acknowledged by the court that the question under consideration was not in respect of a computer program which is not a part of a disk, but that which is contained in a disk/ other media.

The court also discussed the meaning of the term "canned software" and held that the software marketed by the Appellant indisputably fell within the purview of such meaning. Each of the medium on which the software is sold is not only easily available for a price but is also circulated as a commodity in the market. Whether providing an instruction manual with the software would make the software intangible was held in the negative. The court held that such manuals are supplied with several other goods including electronic goods and that does not affect their characterisation. The court reiterated that what was essential for an article to become goods was its marketability.

In view of, inter alia, the above, it was held that the software being sold by the Appellant would be regarded as goods, subject to sales tax in India. An inference may be drawn for direct tax law purposes from this judgment that there is no transfer of copyright on sale of such canned software. Hence, payment made for purchase of shrink-wrapped/canned software should not be treated as royalty for income tax purposes. On a separate note, based on the recommendations made by the Emerging Issues Task Force, a clarification on taxation of software payments under the direct tax laws, is shortly expected from the Central Board of Direct Taxes, India.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Compendium of Research Papers

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Opportunities in GIFT City

March 18, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

Enforceability of unstamped or inadequately stamped Arbitration Agreements

January 10, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Cyber Incident Response Management

February 28, 2024

Webinar : Navigating Advertising

**Laws in India Part II Fireside Chat
with Manisha Kapoor**

February 27, 2024

**Webinar : Navigating Advertising
Laws in India**

February 20, 2024