ISSUED VIDE MEMO NO. 1919-20/ST-1, Dated 7.7.2006

ORDER OF CLARIFICATION MADE BY SHRI L.S.M. SALINS, FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY, GOVERNMENT OF HARYANA, EXCISE AND TAXATION DEPARTMENT UNDER SECTION 56(3) OF THE HARYANA VALUE ADDED TAX ACT, 2003

Querist: M/s Caparo Maruti Ltd., Bawal, Distt. Rewari

The querist is a public limited company having two units in Haryana - one at Bawal and another at Gurgaon separately registered under the Sales Tax/VAT law. It appears from the query that main manufacturing activity is carried at Bawal unit and the components made (for Maruti vehicles) are transferred to Gurgaon unit wherefrom the sale is effected to MUL. Thus, while tax is payable on sale of components to MUL by Gurgaon unit, input tax in respect of materials used in manufacture of the components is accumulated at the hands of Bawal unit which carries out the main manufacturing activity. The query is: whether input tax credit accumulating with Bawal unit can be adjusted with tax liability of Gurgaon unit or not.

2. The case has been examined. Input tax credit is available in all cases except as specified in Schedule 'E' to the Haryana Value Added Tax Act, 2003. Transfer of components made by Bawal unit to Gurgaon unit for sale to MUL is not a sale but simply inter-se transfer as the two are part of one single legal entity and mere separate registration under the Sales Tax/VAT law can not make them into two separate juristic persons enabled by law to contract with each other. Such inter-se transfer does not amount to disposal of goods. Had inter-se transfer been part of disposal, the expression "exported out of State" needs not have been employed in entry 5(ii) under col.3 of Schedule 'E'. Disposal means transfer of title in the goods to other person. The expression "dispose" means to transfer or alienate {See (1988) 69 STC 320(SC) last para}. In the present case, inter-se transfer is not disposal, so clause (ii) of entry 5 in Schedule 'E' is not attracted. Thus, Gurgaon unit is entitled to adjustment of input tax relating to Bawal unit with its (Gurgaon unit) tax liability and Bawal unit will not be entitled to any input tax in respect of the same goods..

3. One of the chief attribute of VAT is that is a neutral levy meaning thereby that treatment of goods by any number of units or passing of goods through any number of hands does not alter the VAT liability so long as the goods are finally sold and the final price is the same. Thus, VAT does not intend to influence economic choices. It is neutral to vertical integration or dispersal of trade. In the present case, if Bawal unit and Gurgaon unit were

to be owned by different companies, then the transfer of components made by Bawal unit to Gurgaon unit would have been a sale and tax liability thereon was adjustable with input tax paid on materials used in the manufacture of the components and the tax so realized by Bawal unit would have become input tax at the hands of the Gurgaon unit adjustable with tax on sale of the components to MUL. The net effect would have been exactly the same as would obtain in the present case when the two units are part of the same company and transfer of goods from Bawal unit to Gurgaon unit is not a sale liable to tax and input tax paid on materials used in manufacture of the components by Bawal unit is adjustable with tax liability of the Gurgaon unit when such components are sold to MUL. Thus, the legal position explained in the preceding para is in consonance with the principles of Value Added Tax. There is nothing in the existing law to deviate from the aforesaid cardinal principle of VAT.

4. It may also be mentioned that if the querist were to merge the two registrations and operate under one certificate under the VAT law which will happen eventually, the VAT liability would not change.

The query is answered accordingly.

(L.S.M.SALINS)
Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise & Taxation Department

Chandigarh
Dated 4.7.2006