

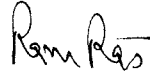
From

Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All the Dy. Excise & Taxation Commissioner (ST),
in the State of Haryana.Memo No. ²⁰⁵⁷ST-I,
Panchkula, dated the 05-11-2012**Subject: Circulation of Clarification-M/s Nestle R&D Centre India Private Limited,
IMT Manesar, Gurgaon.****MEMORANDUM**

A copy of clarification order issued by the Principal Secretary to Government of Haryana, Excise & Taxation Department under section 56(3) of Haryana Value Added Tax Act, 2003 sought by M/s Nestle R&D Centre India Private Limited, IMT Manesar, Gurgaon holding TIN 06311936826 is sent herewith for information and necessary action by all the concerned.



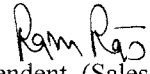
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

Endst. No. / ST-I, Panchkula, dated the

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

Regd.

1. M/s Nestle R&D Centre India Private Limited, 12 CP-A, Sec-8, IMT Manesar, Gurgaon.
2. Jt. Excise & Taxation Commissioner (Divison/Range) Ambala, F/Bad, Gurgaon and Hisar.
3. All Joint Excise & Taxation Commssioners (Appeals) in the State of Haryana.
4. Senior Deputy Accountant General (Audit), Haryana, Chandigarh.
5. Dy. Excise & Taxation Commissioner (Vigilance), Haryana Vigilance Bureau, Sector-6, Panchkula.

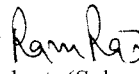


Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

Endst. No. / ST-I, Panchkula, dated the

A copy alongwith a 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. Jt. Excise and Taxation Commissioners
3. Jt. Director (L)-I and II
4. Dy. Excise and Taxation Commissioner
5. DA-I and II
6. DDA-I & II
7. Superintendent (C) for sending E-mail to all the DETCs(ST) and for uploading on website.
8. ST-II only (For adding in The Annual Sales Tax Circular, 2012).



Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

**ORDER OF CLARIFICATION MADE BY SHRI RAJAN GUPTA, I.A.S.
PRINCIPAL SECRETARY TO GOVERNMENT OF HARYANA,
EXCISE & TAXATION DEPARTMENT**

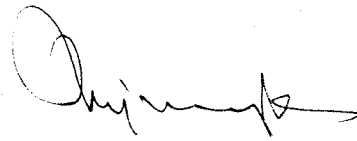
This is an order issued under section 56(3) of the Haryana Value Added Tax Act, 2003 (here in after referred to as the Act) to a clarification sought by M/s. Nestle R&D Centre India Private Limited, IMT Manesar (Gurgaon) (TIN-06311936826) on the issue i.e. *“whether the transaction of sales of Recipes, Formulas, and result of developing new material on CDs, E-mails and by post will be treated as goods under Section 2(r) of Haryana Value Added Tax Act and are liable to tax”* under the Haryana VAT Act, 2003.

2. According to the statement of facts, it is stated that the applicant has set up a research unit for development of food solutions addressing diverse cuisine needs, micronutrients fortification-iron, iodine, zinc and vitamin A, provide solutions to health issues like obesity, diabetes and heart diseases. The applicant will develop new products, do the research on existing products, the result of the research could be a new recipe or a formula to improve the quality of the product. These new results duly patented or copyrighted will be transacted and sold to overseas and Indian customers and sent either by E-mail or in CD or through other services against a sale invoice towards which the applicant will receive money consideration in foreign exchange or INR. According to applicant's own interpretation, the sale of recipes and result of developed material will be applicable to VAT being intangible goods falling under sub clause(r) read with sub clause (ze) of sub section (1) of Section 2 of the

Haryana VAT Act, 2003. The applicant also took support of three judgments delivered by the Hon'ble Supreme Court of India.

3. The issue has been examined in the light of the above. Looking into the various provisions of the Act including definitions of "goods" and "sale" there is no doubt as regard to the liability of vat on sale of intangible goods under the Act. In the present case the new material developed by the applicant and claimed to be intangible goods will be transferred against valuable consideration. The mode of transfer of property in goods may be in the form of CD or e-mail etc. The judgments relied upon by the applicant make it clear that intangible/incorporeal property which is capable of an abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed etc is duly covered under sale of goods and liable to tax under the sales tax act.

4. Therefore, it is clear that the goods in question being intangible/incorporeal goods are liable to tax under the Haryana Value Added Tax Act, 2003 and applicable rate of tax is the rate applicable to goods falling in entry contained at Serial No.3 of Schedule C of the Act. The matter stands clarified accordingly.



(RAJAN GUPTA)

Principal Secretary to Government Haryana,
Excise and Taxation Department

Dated: 30.10.2012
Chandigarh