ORDER OF CLARIFICATION UNDER SECTION 56(3) OF THE HVAT ACT, 2003 ON THE APPLICATION OF M/S GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LIMITED, GURGAON.

This is an order of clarification under section 56(3) of Haryana Value Added Tax Act, 2003 (VAT Act) on the application of M/S GE Capital Transportation Financial Services Limited, Gurgaon seeking clarification whether lease rentals receivable after 01.04.2003 under the lease agreement executed on 14.7.2001 can be legally taxed under the HVAT Act from 1.4.2003 onwards or the entire rentals receivable under the agreement are to be taxed under Haryana General Sales Tax Act, 1973 in the assessment for the year 2002-03.

2. The circumstances envisaged by the applicant and the points on which the clarification has been sought are as follows:-

(i) The applicant is a limited company registered previously under the Haryana General Sales Tax Act, 1973 (in short HGST Act) and now under the Haryana Value Added Tax Act, 2003 (in short HVAT Act) at Gurgaon. On 14.7.2001, applicant executed a master lease agreement (A-1) with M/S Sunil Auto comp Pvt. Ltd., Gurgaon whereby it transferred, right to use of the machinery purchased from Maruti Udyog Ltd., to the lessee M/S Sunil Auto comp Pvt. Ltd., as per agreement. The last installment of the rental is due on 1.2.2007. The rent receipt in consequence of transfer of right to use the machinery were reflected in the quarterly returns from September, 2001 to March, 2002 and April,2002 to March, 2003 filed under the HGST Act. Since the HGST Act was repealed w.e.f. 1.4.2003, the rental which were received on receivable from 1.1.2003 till February, 2007 were reflected in the return of the applicant for the quarter ending 31.3.2003. The applicant has the understanding that under the agreement, rentals were due on a monthly basis and since the taxable event for the said deemed sale had taken place on the execution of agreement and the delivery of goods on 14.7.2001 under the provisions of HGST Act, the future rentals (from 1.4.2003 till 1.2.2007) cannot be taxed under the HVAT Act and the entire transaction is livable to tax

under the HGST Act as the taxable event had been place under the repealed HGST Act. On this understanding, the rentals till February, 2007 have been reflected by the applicant dealer in its return for the quarter ending 31.3.2003. On this basis, the applicant is not including the rentals received on monthly basis in the return filed under the HVAT Act from 1.4.2003 till date.

3. The decisions of Punjab and Haryana High Court in the case of M/S Khazan Chand Nathi Ram Vs. State of Haryana (2004 136 STC 261, the decision of Bombay High Court in the case of I.G.E. (India Ltd.,) Vs. C.S.Naik, Additional Commissioner Sales Tax and others and the orders dated 30.1.2002 and 30.5.2003 of Additional Commissioner of Sales Tax Maharashtra State of Bombay have been gone through.

4. The transfer of right to use is the deemed sale [S2(L)(iv)] under the HGST Act as well as under the HVAT Act [S2(iv)]. Two provisions are reproduced below:-

Section 2(L)(iv) of HGST Act:

"sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration and includes:-

(i) ……..

(ii) ……..

(iii) ……..

(iv) transfer of the right to use any goods [excepts tents, kanats, chholdari, crockery, utensils, furniture and all other goods dealt with by the tent dealers as also other allied dealers for decoration and lighting purposes] for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration ;

Section 2(iv) of HVAT Act:

"sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration except a mortgage or hypothecation of or a charge or pledge on goods, and includes

(i) ……

(ii) ……

(iii) ……

(iv) the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

5. There can be no doubt after perusal of the above provisions that the transfer of right to use any goods for any purpose made for a specified or unspecified period for cash, deferred payment or other valuable considerations is a sale. However, the issue that crops up is about the taxable event of such sales. Whether the execution of agreement to transfer the right to use or delivery of the goods over which the right to use has been transferred or the receipt of rentals is the taxable event; is the prime issue to be decided first.

6. The taxable event should be the transfer of the right to use any goods irrespective of the fact of delivery of goods and payment of rentals. The Hon'ble Supreme Court in the case of 20th Century Finance Corporation Ltd., 119 STC 182 (SC) had observed that taxable event is the transfer of right to use the goods regardless of when or whether the goods are delivered for use. After these observations of the Apex Court, no room is left for any other interpretation qua taxable event in case of a sale that take place by way of transfer of right to use.

7. The lease agreement in the present case is for a fixed period. There is no provision in the agreement providing lessee a right to terminate the lease before the expiry of the lease period. This would show that the consideration for the lease is the aggregate of lease rental payable for the entire fixed period of lease. This entire consideration is the price payable for the transfer of right to use the machinery. It is fixed under the agreement. Though, the rentals are payable every months, the price of transfer of right to use the machinery remains the same much in the same way as the sale price in case of a outright sale of the machinery would remain the same even though the price may be payable by instalments. So the sale price of the transfer of the right to use the machinery is the aggregate of lease rentals receivable for the entire fixed period of lease. It is pertinent to observe that the transfer of right to use the machinery has been transferred once i.e. on 14.7.2001 and not from year to year. It is, therefore, one single transaction of lease and not a lease renewable from month to month or year to year. It would therefore be taxable only once and not on year to year basis for the period of lease. There is no

special dispensation under the HGST Act permitting taxation of lease on year to year basis of instalment received nor similar dispensation exists under HVAT Act.

8. In the given facts and circumstances and the observations made above, the taxable event accrued on 14.7.2001 (date of execution of agreement to transfer the right to use). Further, the aggregate of the amount of lease payable under the agreement is the sale price regardless of when the rentals are received. Therefore, in the instant case, the aggregate of rentals received or receivable under the agreement dated 14.7.2001 is assessable in the year 2001-2002 and specifically form part of the gross turnover for the second quarter of the assessment year 2001-02.

9. In view of this, it is clarified that the amount of lease received on monthly basis after the repeal of HGST Act would not be liable to tax under the provisions of HVAT Act and the entire amount of rentals receivable under the lease are assessable in the year 2001-02 under the HGST Act.

This clarification shall be uploaded on the official website.

Dated:- 02.05.05

(L.S.M.Salins)
Financial Commissioner and Principal
Secretary to Government, Haryana,
Excise and Taxation Department.