

(Issued vide no. 1144/ST-1, dated 23.6.2006)
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 Studio Aggarwal Color Lab, Hisar

The question raised in this case is whether the service made by the Photo color lab to the Customer are taxable

Activities described in paras (a) to (e) of para 1 of the application have been held to be services of such nature and predominant character that transfer of propriety in goods involved in the execution of contract of these services shall not be liable to sales tax as per decision of the Supreme Court in Rainbow Color Lab case 118 STC 9 (SC) and though this decision of the Court was adversely commented upon in a decision of higher bench in ACC's case 124 STC 59 (SC), the Supreme Court in C.K. Jidheesh decided on 27.10.2005 re-inforced the ratio thereby the binding precedent of Rainbow's case stating that adverse observations in ACC's case do not overrule the ratio in Rainbow's case. Thus, the law at present is that activities of the type described in paras (a) to (e) of para 1 of application are not liable to sales tax though there might take place transfer of property in goods involved in the execution of such activities. However, as ACC's case created confusion regarding the ratio of Rainbow case, if any dealer following ACC's case decided on 25.1.2001 has collected tax before the decision in C.K. Jidheesh decided on 27.10.2005, he will not be allowed refund of the same as that will amount to unjust enrichment which the law does not permit. However, it is presumed that LADT will be charged for items procured by the studio.

Financial Commissioner and Principal Secretary
to Government, Haryana Excise and Taxation
Department