

From

Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All the Dy. Excise & Taxation Commissioner (ST),
in the State of Haryana.Memo No. 904/ST-I,
Panchkula, dated the 29-4-13**Subject: Circulation of Clarification-M/s Whirlpool of India Limited, Plot No. 28,
New Industrial Township, Faridabad holding TIN: 06211303083.****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 Whirlpool of India Limited, Plot No. 28, New Industrial Township, Faridabad is sent herewith for information and necessary action by all the concerned.

Ram Raj 26-4-13
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

Endst. No. 905 /ST-I, Panchkula, dated the 29-4-13

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

Regd.

1. M/s Whirlpool of India Limited, Plot No. 28, New Industrial Township, Faridabad
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.

Ram Raj 26-4-13
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

Endst. No. 906 /ST-I, Panchkula, dated the 29-4-13

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).

Ram Raj 26-4-13
Superintendent (Sales Tax)
for Excise & Taxation Commissioner, Haryana.

29-4-13

S. A

**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 VAT Act) on clarifications sought by M/s. Whirlpool of India Limited, Plot No. 28, New Industrial Township, Faridabad holding TIN: 06211303083 on the following issues:-

- (a) Whether Duty Credit Scrips can be purchased by applicant, a registered dealer, against 'C' Forms?
 - (b) Whether the applicant can take credit of tax paid on purchase of Duty Credit Scrips (Scrips) under Section 8 of the Haryana Value Added Tax Act, 2003 whereas the Scrips are used for payment of import duty on goods which are either sold in Haryana or outside Haryana or used for manufacturing goods?
 - (c) Whether credit of tax paid on purchase of Scrips is not liable to be reduced under Section 8 if goods imported using Scrips are transferred out of Haryana, not by way of sale to a non-resident agent or branch of the applicant? If so, what is the extent of reduction of credit prescribed for Scrips?
2. As per statement of facts Whirlpool of India Ltd is a company engaged in business of Home appliances and is registered under the

VAT Act having manufacturing facilities at Ranjangaon (Maharashtra), Faridabad (Haryana) and Pondicherry. It has registered office at Ranjangaon (Pune), Maharashtra and sale/service branches in nearly all the States having obtained sale tax registration in such States. The applicant has stated that the company is desirous of purchasing duty credit Scrips issued to exporters under different Export Incentive Schemes either from within Haryana or from outside Haryana for payment of Custom Duty on goods to be imported by the applicant and wants to take credit of tax paid on the Scrips purchased in Haryana. The applicant is of the view that Duty Credit Scrips are goods and transfer of Scrips for consideration constitutes sale of goods liable to Sale Tax/VAT. He has contended that movement of Scrips from one State to another would be interstate sale under section 3 (a) of the Central Sales Tax Act, 1956 (the CST Act) and hence would be eligible for purchase at concessional rate of tax against 'C' forms. The applicant has further stated that he is entitled to take credit of tax paid on purchase of Scrips which are used for importing goods to be resold or used in manufacturing of goods for sale.

3. The issue has been examined. It is not disputed that Scrips are goods liable to tax under the VAT Act and the CST Act as held by the

Hon'ble Supreme Court of India in case of Vikas Sales Corporation & Another V/s Commissioner of Commercial Taxes and Another reported as AIR 1996 SC 2082 and followed in Yasha Overseas V/s Commissioner of Sales Tax and Others, (2008) 8 SCC 68. Further, Scrips are intangible goods which can not be directly consumed as raw material. Only tangible goods can be used as raw materials/inputs in manufacturing of other tangible goods for sale.

4. As per the provision contained in the Section 8 (3) of the CST Act, a registered dealer can purchase those goods which are specified in his certificate of registration (RC) issued under the CST Act. Further, the goods to be prescribed in his RC are of the description prescribed in section 8 (3) of the CST Act and which are meant for resale by him or for use by him in the manufacture or processing of goods for sale or in the telecommunication network or in mining or in the generation or distribution of electricity or in any other form of power or are containers/packing materials intended for being used for the packing of goods for sale. Form 'C' against which the goods can be purchased at a concessional rate contains a certificate by the purchasing dealer to the effect that the goods supplied to him are of the above description and are duly covered by his RC issued under the CST Act. Thus, it means that

a dealer registered under the CST Act can purchase only those goods against declaration in Form 'C' which are (i) prescribed in his RC and (ii) are of the classes specified in sub section (3) of section 8 of the CST Act. The Scrips intended to be purchased by the applicant, keeping in view the nature of goods, cannot be used as a raw material or machinery or spare parts or packing material. The Scrips can be covered in RC issued under the CST Act for the purpose of resale only. Thus regarding the issue raised at (a) on page 1 it is clear that the Scrips can be purchased against Form C for re-sale only provided the Scrips are authorized in the RC issued under the CST Act.

5. The second issue contained at (b) relates to input tax credit on VAT paid on purchase of Scrips within the State of Haryana and used for payment of import duty on goods which are either sold in Haryana or in the course of inter-state trade and commerce or used in the manufacture of goods and the manufactured goods sold in the two circumstances mentioned above. A "tax invoice" issued by selling VAT dealer according to the provisions of sub-section (2) of section 28 of the VAT Act entitles the purchasing VAT dealer to claim input tax in accordance with the provisions of section 8 of the VAT Act. The goods purchased by the VAT dealer on which input tax is claimed are required

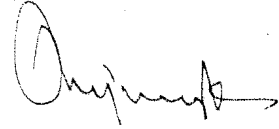
to be taxable goods for resale by him or for use by him in the manufacture or processing of goods for sale. Further, Schedule 'E' attached to the VAT Act restricts claim of input tax on certain goods in some situations contained therein. At Serial No 1 and 2 of this Schedule are Petroleum products and natural gas, and capital goods. The Scrips do not come under these entries and Serial No 5 of this Schedule 'E' refers to all goods not mentioned in Serial No 1 and 2 meaning thereby that Serial No 5 of Schedule-'E' is applicable in case of Scrips. The provision contained at (ii) of Serial No 5 of Schedule-'E' makes it clear that input tax shall be nil when the goods are exported out of State or disposed of otherwise than by sale. As mentioned by the applicant in query at (b), the Scrips are neither to be sold as such nor to be used in manufacture or processing of goods, but are to be adjusted against custom duties payable by him. In the light of the definition of "tax invoice" and the provisions contained in section 8 (1) of the VAT Act and Schedule-E, it is beyond doubt that input tax credit is available only if the Scrips are purchased for re-sale and no input tax credit is available if these are purchased for adjustment of custom duty.

6. As clarified regarding the issue at (b) on page 1 input tax credit is available for resale of Scrips as such and not otherwise. When

no input tax credit is available on the Scrips not sold as such, the issue regarding reversal of input tax does not arise.

The issues stand clarified as above.

Dated: 22.4.2013
Chandigarh



(RAJAN GUPTA)

Principal Secretary to Government of Haryana,
Excise & Taxation Department