

# Sales Tax on Sale of DEPBs?



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**D**EPB is treated as goods and accordingly Sales Tax is levied across the Board. Ironically Import Licence is covered under Sales Tax and quite often under explanatory note it is clarified that, for the purpose of this entry, Import Licence shall include Exim Scrip, Special Import Licence and Duty Free Licence.

While issuing DEPB, since on the face of DEPB the licence word is not deleted, Sales Tax Authorities consider it as a Licence and accordingly charge Sales Tax.

**It may be pertinent to note that :**

(a) In terms of Section 2 (g) of Foreign Trade Development Act 1992 Licence means "The Licence to import or export and includes the Customs Clearance Permit and any other permission issued or granted under this Act".

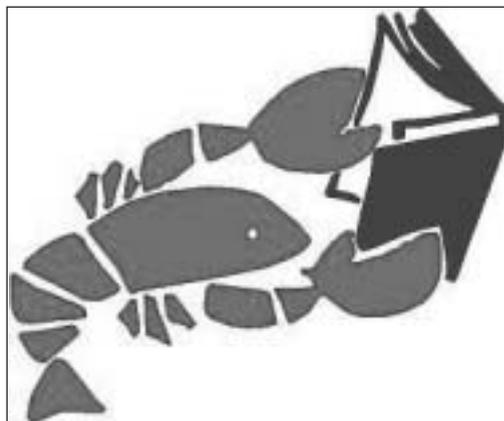
(b) In terms of Para 2.8 of Exim Policy the terms and conditions related to any Licence have been defined as below:

Every Licence/certificate/permission shall be valid for the period of validity specified in the Licence/cer-

tificate/permission and shall contain such terms and conditions as may be specified by the Licensing authority, which may include -

- (a) The quantity, description and value of the goods;
- (b) Actual user condition;
- (c) Export Obligation;
- (d) The value addition to be achieved; and
- (e) The minimum export price

(c) Hence, it can be stated that the licence should include the various terms and conditions as specified from Sr. Nos. (a) to (e) above.



DEPB is issued in terms of para 4.3 of Exim Policy with the objective of neutralizing the incidence of customs duty on the import content of the export product. The neutralization if provided by way of grant of duty credit against the export

product. Hence it falls under the category of a duty free certificate and not in the category of Licence. It also does not include the essential condition for Licence as specified at para 2.8 of Exim Policy.

As the Licensing Office is using the same stationary for issuance of DEPB, which is used for the issuance of the Licences, the Sales Tax authorities consider such DEPBs as licences and charge Sales Tax. At many places the Licencing Authority deletes the particulars while issuing the DEPB. However, the word "Licence" mentioned on the stationary is neither deleted nor made as N.A.

In one of the recent case of Haryana Tax Tribunal, Chandigarh in the matter of M/s Sadhu Overseas, Faridabad vs. State of Haryana:

Haryana General Sales Tax Act, 1973, Section 2(f) - Goods - DEPB (Duty Entitlement Pass Book)

whether goods and liable to sales Tax? Held, No - DEPBs are sort of money, which can be used by the dealer himself, or any body else to discharge the custom duty liability while importing certain goods from out side the country - Sales Tax is applicable only on the sale of

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# TAXATION

goods and money is not goods. DEPB is therefore not covered by the definition of goods --

**Therefore, sale of DEPB is not taxable under Haryana General Sales Tax Act, 1973.**

1. Learned counsel for the appellant submits that the appellant firm is an exporter of various goods and as per import and export policy of Central Government, an exporter is allowed certain benefits in the form of reduction in custom duties on imports. Central Government instead of giving cash, gives Duty Entitlement Pass Book. During the year 1998-99 and 1999-2000, the appellant was given these benefits in the share of DEPBs. Since the appellant was not in need of them, the same were sold by the appellant from its Delhi Office to Customers of Delhi.

2. Since sales of these DEPBs were not before the Assessing

Authorities these were not assessed by them. DEPBs are sort of money which can be used by the dealer himself or by anybody else to discharge custom duty liability while importing certain goods from outside the country. These incentives are nothing but money itself. These DEPBs are tendered to custom



authorities to discharge custom liabilities and, there DEPBs are money. It is submitted that sales tax is applicable on the sale of goods. The term "goods" has been defined in Section 2(F) of the Act. As per this definition

all movables are goods except certain exclusions. Since DEPBs being money are not covered by the definition of goods, therefore sales of DEPBs cannot be taxed under the Haryana General Sales Tax Act, 1973.

Ironically the situation varies

## Impact of Sales Tax on sale of DePB can be visualized as under:

It is estimated that in a year over Rs. 10,000 crores worth of DEPB are issued, which result into Sales Tax liability of over Rs . 500 crores per annum. The export covered in DEPB s around Rs. 1,00,000 crore, hence sales tax liability has an impact of 0.50% of export valued and over 5% of incentive value.

The exporters, while transferring DEPBs have to discount the price by 5% to 10% due to market factors, which again has an implication of over 0.50% of export value and 5% of incentive value.

All above increases the cost of transaction by 1% in export.

from State to State. For instance, UP which was attracting 0% Sales Tax until now, now attracts 0.50%. States like Rajasthan, West Bengal etc., which were levying Sales Tax earlier are not levying any tax now for DEPB. ■

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