

Rolta Computer Case : In context of Transfer of Right to Use under Sale Tax/VAT regime (can be used in section 9(1)(vi) Income Tax Act- International Taxation -equipment royalty, finds applied by AAR similar ratio/principle in DELL; ISRO and Cable and Wireless cases)

In the present case, from the facts noted earlier, it is clear that the goods, i.e., computers and terminals were always in possession of the respondents. They were never delivered or handed over to the ONGC. It may be that as per the requirement of ONGC, fixed time was assigned to them and during that fixed time of the day, staff members of ONGC would come to the office of the respondents to get their work done but during all that period, computers would be operated by the employees of the respondents and not by the employees of the ONGC. Merely because a person agrees to provide service to a particular customer during a particular period of time of day to the exclusion of all other customers for the purpose of convenience, it does not mean that goods have been actually delivered to that particular customer to the exclusion of not only other customers but also to the exclusion of owner himself. Nature of the contract and the transaction between the respondents and the ONGC was nothing more than service contract whereby certain services were provided by the respondents to the ONGC. There is nothing to show that the constructive possession of the computers and other instruments was with ONGC at any time. To that extent, the question no.2 is not correct. In view of the language of Sections 3 and 4 tax shall be leviable on the turnover of sales in respect of transfer of right to use any goods. Unless there is transfer of right to use any goods, the provisions of the said Act will not be attracted and sales tax cannot be levied on such transactions. Taking into consideration the nature of the contract between the respondents and the ONGC and the legal position, it must be held that the Tribunal correctly interpreted the provisions of Section 2(10) of the Act while holding that the transaction is not taxable."