

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

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## **Understanding Trademarks**

The Trade Marks Act provides, inter alia, for registration of service marks, filing of multiclass applications, increasing the term of registration of a trademark to ten years as well as recognition of the concept of well-known marks, etc. The Indian judiciary has been proactive in the protection of trademarks, and it has extended the protection under the trademarks law to Domain Names.

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# CORPORATE AFFAIRS



## 'Residents in India' redefined and amended

The term resident in India stands amended in the Limited Liability Partnership Act, 2008 and shall now mean and include a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year instead of 182 days.

## Concept of Small LLP

- the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees
- the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees.
- any such conditions as prescribed



# TAXATION



## **CBDT extends date under section 3 of the Vivad se Vishwas Act**

Considering the difficulties being faced in issuing and amending Form no 3, which is a prerequisite for making payment by the declarant under Vivad se Vishwas Act, it has been decided to extend the last date of payment of the amount (without any additional amount) **to 30th September, 2021**

## **GSTR-9 & GSTR-9C**

- No Requirement of GSTR-9 for a Turnover up to INR 2 Crore
- GSTR-9 is Required for the Turnover between the Amount of INR 2 crores to INR 5 Crores
- Both the Formats i.e. GSTR 9 & GSTR 9C shall be required if Turnover is Greater than INR 5 Crores
- Last Date for Filing Form GSTR 9 & GSTR 9C is **December 31, 2021**



# LEGAL



In simple words, trademarks are special unique signs that are used to identify goods or services from a certain company. They can be designs, pictures, signs or even expressions. It is important because it differentiates your products from the competitions. It can be associated with your brand or product. Trademarks are classified as intellectual property and therefore is protected from infringement.

## WHAT CAN BE TRADEMARKED?

By trademarking your company's name, you are protecting the brand, its reputation, and your ideas, all of which you undoubtedly invested a great deal of blood, sweat, and tear working on. And while the trademarking process itself will take time in all areas considered, nothing would be worse than not protecting your brand and potentially be faced with an infringement lawsuit from a larger company.

You can trademark any one of the below things or even a combination of the following:

- Letter
- Word
- Number
- Phrase
- Graphics
- Logo
- Sound Mark
- Smell or a mix of colors



## WHO CAN APPLY FOR A TRADEMARK?

In the Trademark Registration form, the person whose name is mentioned as the applicant will be declared as the owner of the trademark once the trademark is successfully registered. Any individual, a company and an LLP can be an applicant and may file the application for the registration of the particular trademark.

## BENEFITS OF TRADEMARK REGISTRATION IN INDIA

Apart from being unique, a Trademark should be easy to use, make your products marketable and create brand recognition for your products. Trademark registration has several advantages and benefits to the owner:

- Legal protection
- Product differentiation
- Brand recognition
- Creation of an asset
- Business valuation and goodwill
- Business expansion

# FROM THE ARCHIVES

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***Grape Marketing (P) Ltd.***  
***versus***  
***Commissioner of Sales Tax, Delhi***

*Present for the respondent: Mr. S.B. Jain*

*Date of order: 28.02.2019*

SEARCH AND SURVEY BY ENFORCEMENT TEAM U/S 60 OF DVAT ACT,2004- ALLEGING PURCHASES MADE FROM NON-FUNCTIONAL AND CANCELLED DEALERS –SURVEY TEAM FORCEFULLY COLLECTED RS.52,24,000/- AND TAKEN STATEMENT OF APPELLANT FOR CLAIMING WRONG ITC – ITC DISALLOWED U/S 9(2)(g) – DEMAND CREATED –ASSESSMENT FRAMED AND PENALTY IMPOSED - OHA REJECTED THE OBJECTION PETITION ON THE BASIS OF STATEMENT OF APPELLANT GIVEN BEFORE SURVEY TEAM- WHETHER JUSTIFIED; HELD – NO DISPUTED TRANSACTIONS WERE NOT VERIFIED – DIRECTION GIVEN TO ISSUE NOTICE TO SELLING DEALERS – PENALTY IMPOSED PRIOR TO GIVING SEPARATE NOTICES – ORDERS SET ASIDE TO REFRAME ASSESSMENT, AFRESH.

## **BRIEF FACTS OF THE CASE:**

The appellant was a Private Ltd. Company, registered under the Companies Act, 1956. Appellant was registered under DVAT Act.

That an Inspection / survey of the company was conducted by the Enforcement -1 Branch. It was alleged that the appellant had been claiming inappropriate ITC on the basis of purchases made from non-existing/non-functional/cancelled firms. That a notice was issued u/s 59(2) of the DVAT Act dated 24/8/2015 with direction to appellant for hearing along with relevant documents and books of accounts, in compliance of which appellant had submitted all the documents as directed in the notice but VATO did not rely on the documents and raised the demand annually 2013-14 , 1st qtr & 2nd qtr 2014-15 and the penalty was also imposed. VATO imposed tax Rs. 46,85,386/-, interest Rs. 9,37,837/- and penalty Rs. 32,49,294/- total amounting to Rs. 88,72,517/-.

That the appellant was forced to deposit Rs.52,24,000/- at the time of search. The demand was raised mainly on the ground that appellant had made purchases from M/s S.K. & Company and M/s Shashi Sales Marketing (P) Ltd., were bogus/cancelled dealers, although there was no evidence to prove that the dealers were suspicious/bogus dealers. The VATO disallowed ITC U/s 9(2)(g) of DVAT Act without applying the same in letter and spirit.

That VATO also relied upon the statement of the appellant in which the appellant accepted the fact that M/s. S.K. & Company was a bogus dealer without appreciating that statement was taken forcefully and on the condition of de-sealing of premises, even otherwise a statement taken under coercion was unlawful and same could not be relied upon.

The appellant filed objections before the OHA, which were rejected and direction was given to the VATO to consider the deposit of tax of Rs. 52,24,000/- by the appellant in pursuance of the Enforcement survey.

**HELD:**

The appellant made purchases from the dealers on the date when the dealers were registered and they issued tax invoices to the appellant. Appellant had filed copies of tax invoices on which TIN Number of these registered dealers was mentioned. Not only this 2A report of the purchasing dealer and 2B report of the selling dealers was verified by the system of the Department . In these circumstances, ITC was wrongly denied to the appellant without giving any notice and opportunity of hearing to the selling dealers.

It was also astonishing that by simply writing that selling dealers were bogus / suspicious dealers, the ITC had been denied to the appellant who was a bona fide purchaser. No definition of word bogus/suspicious dealers has been given under DVAT Act and no evidence has been produced by the revenue side to prove that selling dealers were bogus/suspicious dealers. Revenue side had not produced any evidence to prove that there was any collusion between the purchasing and selling dealers.

It was correct to say that appellant had no access to returns filed by the selling dealers as they were confidential. When appellant had no access to returns of selling dealers how appellant could come to know that selling dealers had not deposited the tax with the Govt. or adjusted it against output tax liability.

In view of the Tribunal, whether statement was voluntary or under coercion , crux of the matter in the appeals was whether appellant made bona fide purchases after payment of VAT to the selling dealers . If these payments were made, then State was not entitled to again impose tax for the same transactions. VATO was required to issue notices to the selling dealers and after examination of disputed transactions should have framed assessment.

So far as the imposition of penalty was concerned, it could not be imposed without prior notice as held by Hon'ble Delhi High court in the case of M/s Bansal Dye Chem Pvt. Ltd. Vs CTT case decided on 24.9.15.

Impugned orders dated 27.06.17 passed by OHA were hereby set aside and appeals were allowed and matter was remanded back to the concerned VATO to reframe assessment afresh after giving opportunity of hearing to appellant as well as selling dealers and adjust amount of Rs.52,24,000/- accordingly.





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