

# LEVIABILITY OF SALES TAX TO ACTIONABLE CLAIM

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## A QUICK BACKGROUND:

Prior to the amending Act 2 of 1900, actionable claim embraced all claims which civil court recognized as affording grounds for relief. Even a right to sue for damages for breach of contract and tort were held to be actionable claims even though such right was not attachable as such. But after this Act, the definition of actionable claim was restricted to unsecured debts and beneficial interests in movable property not in possession of the claimant. The affect of this amendment is that now a clear distinction lies between property (actionable claim) and a right to sue.

## ISSUES RAISED:

The issues dealt by me in this article are as follows:

- I) Whether actionable claim can be considered as goods?
- II) Whether sales tax can be levied on actionable claim?

## DEFINITION OF ACTIONABLE CLAIM:

Section 3 of Transfer of Property 1882 defines "Actionable claim". As per Mulla's T.P. Act an actionable claim is a claim to any unsecured debt. Such a debt should be other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property (because these are not transfers of claim but of the property itself) or a claim to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant. The claim should be such as Civil Court would recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent; Such transfer of an actionable claim shall be effected only by execution of an instrument in writing by the assignor to the assignee. [Section 130 of Transfer of Property 1882].

## DEFINITION OF GOODS:

- Definition of goods under *Sale of Goods Act 1930* - "Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. [section 2(7)].
- Definition of goods under *Central Sales Tax Act 1956*- "Goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities. [section 2 (d)]

## ISSUE I & II: DETERMINATION WHETHER ACTIONABLE CLAIM OR GOODS WITH THE HELP OF RELEVANT CASE LAWS

- *H. Anraj v. State of Tamil Nadu (1986) 1 SCC 414*

Issue: Whether sales tax can be levied by a State Legislature on the sale of the Lottery Tickets in the concerned State?

The Supreme Court held that the lottery tickets, to the extent they comprise an entitlement to participate in a draw, are "goods" as they constitute a dealer's (in lottery tickets) stock in trade which is capable of being bought and sold in the market (and that there is a transfer of property in goods in every sale of the same). Lottery tickets are goods and not actionable claims. Both were held to be beneficial interests in moveable property, the former in present, and the latter in future, depending on the contingency.

- *Vikas Sales Corporation v Commissioner of Commercial Taxes AIR 1996 SC 2082*

Issue: Whether transfer of import license (REP) by the holder to another person constitute sales of goods?

S.C examined if it does, it is exigible to sales tax, otherwise not. The features of REP licence include an innate value and freely transferable. These features make it a marketable commodity. Thus it held that it was a highly attractive and sought after instrument/means for importing goods. Infact, those licenses were being traded freely in the market and for that reason alone those were goods. Also, when they have a value of their own unrelated to the goods which can be imported there under, it is idle to contend that they are in the nature of actionable claims.

- *Sunrise Associates vs. Govt. of NCT of Delhi & Ors 2006 (5) SCC 603*

Issue: Whether decision in Anraj case that lottery tickets are goods for purposes of levying sales tax was correct?

S.C. held that the lottery ticket has no value in itself as it is mere piece of paper. Its value lies in fact that it represents chance or right to conditional benefit of winning prize of greater value than consideration paid for transfer of that chance. It is nothing more than token or evidence of this right. Three ingredients in the sale of lottery tickets, namely, (i) prize; (ii) chance; and (iii) consideration. So, when one purchases a lottery ticket, he purchases for a prize, which is by chance and the consideration is the price of the ticket. The distinction drawn in H. Anraj case between the chance to win and the right to participate in the draw was held to be unwarranted and specious. Even if taken as a separate right, it would still be considered to be an actionable claim. A Constitutional Bench of the S.C. overturned the decision in the H Anraj case, holding that the sale of lottery tickets is, at best, an actionable claim.

- *Yasha Overseas v. Commissioner of Sales Tax (2008)*

Issue: Whether the decision in Vikas case can be said to be impliedly overruled by the Constitution Bench decision in Sunrise? If no, whether Vikas case is still a good law and apply to cases of DEPB?

S.C. held that It was indeed true that the Constitution Bench in Sunrise Associates' case (supra) did not approve the decision in Vikas Sales Corpn.'s case (supra) insofar as it gave their free transferability as an additional reason to hold that REP licences were not actionable claims but 'goods' properly so called. But there this question did not come for reference and hence no decision was given on this issue. Decision in Vikas sales still holds good and is applicable to DEPB as well.

- *State of Kerala and Ors. v. Mini Shamsudin and Ors. (2009)*

Issue: Whether decision in Sunrise case is correct?

H.C. upheld the decision of Sunrise case. It held that actionable claims are 'goods' and movable property but not for the purpose of the Sales Tax Acts. Consequently, an actionable claim is movable property and 'goods' in the wider sense of the term but a sale of an actionable claim would not be subject to the sales tax law.

**CONCLUSION:**

Actionable claim can be considered as goods but not for the purpose of levying of sales tax.