

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES:::ASSAM:::GUWAHATI.

ORDER

Dated Dispur, the 30th April, 2011.

No. CTS-7/2009/286 : M/s Bharat Heavy Electricals Ltd. IOC site, Digboi has filed an application as per provision of section 105 under the Assam Value Added Tax Act, 2003 seeking clarification on the following issues:-

- a) Whether a contractor is liable to pay VAT while executing works contract when the required materials are supplied by the contractee to the contractor free of any charge?
- b) Whether the contractee is responsible to deduct tax at source under section 47(1) (a) of the AVAT Act, 2003 where taxable turnover determined following the principles laid down under section 11 of the AVAT Act, 2003 is NIL?
- c) Whether no deduction certificate as provided under section 47(1)(b) read with rule 28(2)(a) is required to be obtained where taxable turnover as mentioned above is NIL?

Sri P. Dev, Deputy General Manager and Sri M.K. Sigha, C.A. appeared on behalf of the petitioner and filed their submission. Statement of relevant facts submitted by the petitioner having a bearing on the aforesaid questions are as below :-

1. There was no transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract from the contractor to the contractee.
2. The provision of section 47(1)(a) envisage that tax has to be deducted at source against the taxable turnover' only. The taxable turnover is to be determined in accordance with the provisions of section 11 read with rule 10 of the AVAT Act, 2003. In the instant case, taxable turnover being nil, there is no scope for deduction of tax at source.
3. Therefore it transpires that Form-31 is not required to be obtained from prescribed authority and the question of submitting the same to the contractee is not warranted.

Perused the submission and provisions of the Assam Value Added Tax Act, 2003 is examined. Factual matrices of the case can be described as below:-

The contract is of refurbishment and upgradation work of 4 Nos. of Land Drilling Rigs of ONGC by BHEL. The break up of prices and the job are as under.

1. Supply of brought items (indigenous and imported) = Rs. 6554.82 lakhs.
2. Supply of manufactured items = Rs.6048.42 lakhs.
3. Engineering Site Erection and commissioning = Rs.987.57 lakhs.
4. Freight & insurance for (1) & (2) = Rs.537.00 lakhs.

The contract is in the nature of turn-key contract comprising ex-Assam supply of items either manufactured by BHEL itself or procured by them from other manufacturers. The supply of all items has been claimed as inter-state supply to ONGC. The next component of the work is erection and commissioning of the equipments, or fitting by way refurbishing to the existing assets of ONGC. The goods/equipments are imported into Assam by utilizing Road permit obtained by ONGC in its own account. ONGC also issues 'C' form to BHEL against goods received in course of inter-state trade.

The components of the work mentioned at Sl.1 and 2 above being falling under the provisions of CST Act, no tax appears to be chargeable under VAT thereon. However, as regard component of work mentioned at 3 above, the work may involve transfer of property in goods in course of execution of civil works of erection.

Though, Section 47 (1)(a) does not specifically mention who i.e. whether the contractee DDO or the assessing officer in relation to the contractor, is to determine the quantum of taxable turnover for the purpose of deduction of tax at source, but a conjoint reading of all the provisions of section 47(1) bring out that such determination is meant to be made by the assessing officer. In fact, precisely for this reason a provision has been made for issuance of certificate for no deduction or lower deduction of tax at source by the assessing officer.

Therefore, the present reference is disposed of by issuing following clarification:-

The lower amount of tax deduction at source or no deduction of tax at source can be determined only by the jurisdictional assessing officer within the meaning of the relevant provisions of the Assam Value Added Tax Act, 2003.

Hence, petitioner may approach the concerned assessing officer for granting certificate of no deduction or lower deduction of tax at source, as the case may be. Further, the assessing officer is also directed to dispose of the petitioner's claim for any no-deduction or lower deduction of tax at source as per law within 1(one) month, as prescribed by rule 28(2)(c) of the Assam Value Added Tax Rules, 2005.

Sd/-
(Ashutosh Agnihotri)
Commissioner of Taxes, Assam,
Guwahati.

Dated Dispur, the 2nd May, 2011.

Memo No. CTS-7/2009/286-A
Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioners of Taxes, (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information and necessary action.
5. M/s Bharat Heavy Electricals Ltd. IOC site, Digboi for information.

R.D. Borah
(R.D. Borah)

Joint Commissioner of Taxes, Assam,
Guwahati.
