

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXE: ASSAM
KAR-BHAWAN, DISPUR, GUWAHATI-6

No.CTS-53/2006/385

Dated Guwahati the 18th Dec/2015.

M/s IMS SHIP Management Pvt. Ltd Vaswani Mansion, Dinsha Vachlia Road Churchgate, Mumbai has filed an application under section 105 of the Assam Value Added Tax Act,2003 seeking clarification whether the process of De-silting and maintenance of Natural rivers/channels through engagement of manual labourers and machines only and not involving any transfer of property in goods is eligible to tax and tax is deductible under the Assam Value Added Tax Act, 2003. The application is found in order and hence admitted.

Shri P. Ramalu, project incharge of the petitioner company placed his submission. He contended that the contract undertaken is purely a labor contract involving no transfer of property in goods in execution of the contract and hence tax at source need not be deducted. Citation from the judgement and order of the Hon'ble Kerala High Court in the case of Dynamic Industrial and cleaning service (P)Ltd vs State of Kerala and another (1995) 97 STC 564 (ker) was made to justify that mere execution of works contract does not by itself attract liability to tax under the Act unless it is accompanied by transfer of property in goods in the execution of works contract. He also contended that as per amended 47 (1) (a) of the AVAT Act, a person responsible for making any payment or discharging any liability purporting to be full and part payment of sale price or consideration for the transfer of property in goods involved in the execution of works contract shall deduct and amount calculated on the taxable turnover of such works contract. He contended that taxable turnover in the execution of the contract is nil and hence no deduction at source is permissible.

Also appeared Shri Vivek Goel and Shri Vinod Kumar Lohia, Tax practitioners to argue the case. A copy of the works order under No. CE/CC/ WR/ WO/ 2014-15/361/pt-24 dt.11-12-14 issued by the Chief Engineer, Water Resources Deptt. Chandmari, Guwahati awarding the contract was also submitted which mentions the item of work as (1) Earth Work in de-siltation of drainage channel to proper grade and slope and (2) Engagement of ordinary labour for clearing garbage's debris and other floating materials.

Citation was also made in respect of order under No.CTS-6/2009/54, dt.23-6-2009 and No. CTS-50/2005/222 dt.10-3-11 issued by the Commissioner of Taxes, Assam Clarify nil liability to taxes where the work order is a labour contract and where there is no transfer of property in goods.

Heard them and perused the works order and found that the contract is primarily labour contract and there is no transfer of property in goods.

It is clarified that the work order issued under No. CE/CC/WR/WO/2014-15 361/pt-24 dt. 11.12.14 is a labour contract not exigible to tax under the Assam Value Added Tax Act,2003. Therefore tax at source need not be deducted provided that composition scheme for work contractor is not opted for.


Sd/-
(Shri Anurag Goel)
Commissioner of Taxes, Assam
Dispur, Guwahati

Memo No: CTS-53/2006/385-A

Dated Guwahati the 18th Dec.,2015.

Copy to:

1. The Principal Secretary to the Govt. of Assam , Finance Deptt., Dispur-6 for favour of information of the Govt.
2. The Addl.C.T./J.C.T. (All) for information.
3. The D.T.C. (All) for information.
4. The A.C.T./S.T. (All) for information.
5. M/s IMS SHIP, Management Pvt.Ltd Vaswani Mansion, Dinsha Vachlia Road Churchgate, Mumbai for information.


(Shri.P.K.Das)
Joint Commissioner of Taxes, Assam
Dispur, Guwahati


MOS
19/12/15