

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

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**ORDER**

Dated Dispur, the 9<sup>th</sup> December, 2015.

No.CTS-84/2015/77 : M/s Metro Electric Services, Hotel Abhijit Complex, G.S. Road, Ganeshguri, Guwahati-6 filed initially one application dated 9.9.15 under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification as to whether deduction of tax at source under section 47 of the Assam Value Added Tax Act, 2003 is permissible in case of sales covered by section 3(9) read with section 2 (9) (ii) of the Central Sales Tax Act, 1956. He filed subsequently another application (undated) under the aforesaid provisions seeking clarification on the query described verbatim as follows "whether trader, who is registered under the Assam Value Added Tax Act is liable to pay entry tax and realization of security under Rule 41(12) (VI E) of the Assam Value Added Tax Rules, 2005 for import of specified goods for use in execution of works contract as deemed sale under section 2 (g) (ii) of the Central Sales Tax Act, 1956 without authority of law". Be that as it may, hearing on the application dated 09.09.2015 was fixed on 28.10.2015. Mrs. Angira Bania, Advocate and Authorized Representative on behalf of the petitioner appeared and filed written submission and also made over copies of few judgements of the Supreme Court of India and Gauhati High Court.

Perused the copies of documents furnished by the petitioner and also examined the relevant applicable provisions of the Assam Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956. It appears that the petitioner has although furnished a copy of letter of intent (L O I) but has not furnished contract agreement between the petitioner and the contractee DRDO for installation of power fence system and CCTV system at Digaru Air Force station, P.O. Digaru (Assam) and Defence Research Laboratory, Tezpur. The scope of the work also envisaged for maintenance guarantee of the work for a period of 24 months from the date of issuance of completion certificate by the concerned officials at sites in Assam. The accepted rates by the contractee are inclusive of all taxes, duties, levies etc. including VAT, works contract tax, service tax etc. The applicant also seem to have obtained GRN Registration bearing No.18600199635 (GRN) with the concerned tax authority of Assam. The contractee department appear thereafter to have deducted tax at source at the applicable composition rate and to have remitted such TDS amounts to tax authorities of Assam. The materials incorporated in the works contract in Assam have been procured from M/s. TNS Manufacturing Solution Pvt. Ltd., New Delhi-74 and M/s. Super Agencies, Delhi-92 by the petitioner and delivery of the materials also have been taken by himself in Assam for the eventual incorporation in the works contract. The initial movement of the goods arose in pursuance of interstate sale effected between the petitioner and the Delhi based firms. The contractee appears to be in no way connected with the preceding transactions between such firms and the petitioner or with the movement of the materials from Delhi to Assam.

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The petitioner has made no claim or averment that he has effected the deemed sale as a subsequent deemed sale within the meaning of section 6 (2) of the Central Sales Tax, 1956. Therefore the question sought to be raised in the application dated 9.9.2015 has absolutely no relevance vis-à-vis the actual facts of transaction presented before this authority. On the other hand, it is revealed from the actual conduct of the parties namely the applicant and the contractee department that the real nature of the transaction between them are of local works contract chargeable to local VAT. The provision of section 47 of the Assam Value Added Tax Act, 2003 on the other hand enjoins upon every person responsible for making any payment in respect of supply of goods, execution of works contract or giving in lease movable properties to any organization receiving public fund, a liability for deduction of VAT at source before making such payment to concerned suppliers, contractor or lessor as the case may be unless the latter produces copy of registration under Assam Value Added Tax Act, 2003. The provisions namely Sub-section (8) of section 47 also provides that any amount deducted at source in excess of the actually payable tax is to be refunded to the person from whom such deduction is made. Furthermore, the provisions of Rule 28 has also provided for no deduction of tax at source or deduction of tax at a lower amount in case of the dealer furnishes certificate obtained from the jurisdictional prescribed authority to the effect before the recipient of the goods or the contractee. It is also true that the provisions of section 47 of the Act or the Rules, made thereunder are only machinery provisions for carrying out purposes of the Act. They do not create any liability to tax as such which field is exclusively occupied by the charging provisions contained in chapter III composing sections from 7 to 20. In the background of all these facts gathered during examination of the case under reference, it appears that the question sought to be raised by the petitioner is based on purely hypothetical assumption and the various judgements of the Apex court or the High Courts sought to be relied by the applicant bear no practical relevance to the facts of the case emerging during present proceedings. Therefore, in so far as the application dated 9.9.2015 of the petitioner is concerned, it is hereby clarified that any drawing and disbursing official of any organization receiving public fund is liable to deduct tax at source at the prescribed rates and also to deposit tax so deducted into the Government accounts within the prescribed timeframe unless the contractor or the supplier furnishes a certificate obtained from the jurisdiction prescribed authority to the effect before the concerned person of the purchasing or the contractee department.

As regard the later application (undated) filed by the petitioner U/s 105 of the Assam Value Added Tax Act, 2003, it is crystal clear from the relevant applicable provision of the Assam Entry Tax Act, 2008 namely, clause (i) & (ii) of Sub-section (2) of the section 3 that when the importer of any specified goods is registered under the Assam Value Added Tax Act, 2003 and he is liable to pay tax on sales thereof in the State or effects inter-state sale or export sales of such specified goods after import into Assam, then he does not attract liability on such specified goods.

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As regard the query regarding realization of security under Rule 41(12) (vii), it is clarified that such provision being meant only for safeguarding against any probable misuse of statutory forms to be issued by the prescribed authority, it would not be correct to predetermine an action on the line by the prescribed authority as unlawful as such.

The two applications filed by the petitioner stand thus disposed.


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

Dated Dispur, the...11th December, 2015.

Memo No.CTS-84/2015/77-A

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioners of Taxes/ Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioner of Taxes , (All) for information.
4. The Assistant Commissioner of Taxes, (All) for information.
5. M/s Metro Electric Services, Hotel Abhijit Complex, G.S. Road, Ganeshguri, Guwahati-6 for information.

  
(A Choudhury)  
Joint Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

  
10/12/15