

**GOVERNMENT OF ANDHRA PRADESH  
FINANCE (WORKS & PROJECTS) DEPARTMENT**

**From:**  
Sri E.V.Ranga Chary, B.Sc.,  
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M3 Block, 1<sup>st</sup> Floor,  
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**To**  
The Secretary to Government,  
Finance (W&P) Department,  
Government of Andhra Pradesh,  
Secretariat Buildings,  
HYDERABAD – 500 022.

**Letter No.DWA/Hyd/Sn.II/A9/2008-09/** 70 **Dated:27-06-2008.**  
**Sir,**

**Sub: -VAT – Excess Recovery of VAT – Refund – In respect of Package No. 102  
- Nettempadu Project – Certain Clarification sought for – Regarding.**

- Ref: -1) Joint Director of Works Accounts, NS Project, Hill colony Lr.No. JDWA/  
NSP/HC/ITC/2008-2009/30 dated 04-06-2008 addressed to this office.**  
2) Memo.No.DWA/Hyd/Sn.II/A9/2007-08/32, dated 28-05-2007.  
3) Memo.No.DWA/Hyd/Sn.II/A9/2006-07/236, dated 16-11-2006.  
4) Govt.Memo.No.12647/F-8 (1)/2005-1, dated 12-10-2005 of Finance (W&P)  
Department, Government of Andhra Pradesh.  
5) Govt.Memo.No.602/F8 (1)2006, dated 14-03-2007 of Finance (TFR)  
Department, Government of Andhra Pradesh.  
6) Govt.Memo.No.602/F8 (1)/2006-8, dated 19-07-2007 of Finance (W&P),  
Department, Government of Andhra Pradesh.  
7) Commissioner of Commercial Taxes, A.P., Hyderabad ref.No.AIII(1)/253  
2006, dated 03-08-2007 addressed to the Principal Secretary to  
Government, Revenue(C.T-II) Department, A.P., Secretariat, Hyderabad.  
8) CCT Ref.No.AIII(3)/296/2007, dated 22-01-2008 addressed to General  
Manager, A.P., Industrial Infrastructure Corporation Limited, Hyderabad.

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It is submitted that the Joint Director of Works Accounts, NSP, Hill colony has sought for certain clarifications on a representation made by M/s S.V. Engineering Constructions – B. Kumaraswamy Reddy (JV) claiming refund of excess recovery of VAT in respect of the work under E.P.C. Package No. '102-Nettempadu', Investigation, design, estimation and execution of earth work excavation and forming embankment of gravity canal of Nettempadu Lift Irrigation Scheme in Mahaboobnagar District from cistern of Lift I for a total length of 8.200 KM with carrying capacity of 55.000 cum starting from level at 349.000 to 347.00 i.e., to upto tunnel entrance including construction and maintenance of CM & CD works and the main clarifications sought for are on the following lines:

(A) Whether recovery of VAT @ 4% on 70% (i.e. @ 2.8%) keeping the difference of 1.2% (i.e., difference between 4% - 2.8%) in work is to be applied even in this case where the agreement was signed on 06-09-2005 i.e., after the introduction of the VAT Act, 2005 from 01-04-2005.

(B) Whether recovery of tax is to be effected @ 4% in the case of 'Composite' nature of works, without working out quantum of tax on Earthwork, Structures involving CM & CD works separately at different percentages (as prescribed in the then APGST Act). Since 2% on 70% was loaded on the Earthwork item and 4% on 70% was loaded for certain items in the estimate.

(C) Whether the IBM value OR the Agreement value or as per the report of E.E., during Execution is to be taken into consideration in order to see if the quantum of material component is less than 10% of total cost for the purpose of determining imposition of recovery of VAT.

(2) Similar doubts are reported from other units also and it is therefore desirable to examine the issue in its entirety and appropriate clarification issued and with this end in view the following is submitted:



**(A) Distinction in the application of 2.8% VAT between agreements concluded prior to 01-04-2005 and those concluded after 01-04-2005.**

- (i) In the instant case, tenders were called for by the Superintending Engineer through tender notice dated 10-01-2005 for EPC Package No. 102: Nettempadu and the tender was submitted by the bidder on 16-02-2005 and the last date for submission of tenders was 21-02-2005. The Estimate was technically sanctioned on 23-06-2005 and the Agreement was concluded on 6-9-2005. The provisions of the then existing APGST Act were alone incorporated in the bid documents & Agreement as given below.

Clause '105 – Sales Tax / F – Other General Conditions / General Conditions of Contract;'

**" 105, Sales Tax":**

**105.1** Sales Tax during the currency of the contract, deduction towards Andhra Pradesh Sales Tax under section 5 H of APGST Act, 57 according to which tax @ 4% has to be deducted at source, while making payment to the contractor.

As per Act 22 of 1955, the connected rules 17 (1) has been amended and substituted as follows:

' The tax to be deducted at source under section 5 H shall be at the rates prescribed below:

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| i) All the Categories of Contracts not falling under sub-clause (ii) mentioned below.  | } 4% of turn over determined as per clause (ii) sub-rule (3) of Rule 6.  |
| ii) Exclusive Civil Contracts, namely contracts for laying, repairing of Roads and contracts for canal Digging lining and repairing. | } 2% of turn over determined as per clause (ii) sub-rule (3) of Rule 6". |

Further sub-clauses on '105, Sales Tax' continued under sub clauses 105.3 and 105.4 read as under in the above bid and agreement.

**"105.3:** The tax structure under Clause 105 is liable for revision as per the orders of the Government issued from time to time and in such cases, the Sales Tax will be deducted at source at the revised rates only while making payment to the contractor duly modifying the provision made in the estimate according to revised rates of Sales Tax.

**105.4:** Excess due to revision of Sales Tax as per orders of Government from time to time will be reimbursed."

ii) As per the above clauses, it is clear that whenever the tax is revised, the Sales Tax will have to be deducted at source at such revised rates only from the bidder and the Department will have to suitably modify the provisions in the estimates duly incorporating the difference due to enhanced rates and when such revision takes place, the said excess so recovered shall be reimbursed to the bidder. **In other words, such increase shall be charged to the works expenditure at the time of payment of bills, while the Contractor's liability remains what it was at the time of bidding.** At this point, a doubt is raised whether last date for submission of bid or the publication of Andhra Pradesh VAT ordinance No. 1 of 2005 on January 31<sup>st</sup> 2005 in A.P. Gazette is to be taken for the purpose of contractor's liability. In this context, the clarifications issued by the Government, the then Director of Works Accounts vide reference 2<sup>nd</sup> to 4<sup>th</sup> cited are here with submitted for further examination by the Government.



- a) Notification of Ordinance No. 1 of 2005 on 31<sup>st</sup> January 2005.
- b) Calling of Tenders before 1.4.2005 on which date VAT came into force.
- c) Submission of bids before 1.4.2005.
- d) Date of concluding the agreement.

iii) Ultimately, the intention of the above clauses (105.3 & 105.4) appears to be that the contractor shall be suitably compensated if the rates of tax are revised subsequent to issue of bid documents. As per the notification issued by the Government on 31.1.2005, no amendments/ addenda / correction slips were issued to the tender documents to that effect, though the last date for receipt of tenders was on 21<sup>st</sup> February, 2005. From this, it may have to be construed that the Department did not want to take this notification of VAT to the notice of the bidder, while on the other hand it, however, had included the provision of compensating the increase in the tender document itself and that was why it might have felt unnecessary to mention the same as it would have no bearing on the tax structure already committed in the bid documents.

iv) Even at the time of conclusion of the agreement in September 2005 no change in the conditions referred above was made and therefore the said provisions as existed at the time of bidding remained unchanged. From this also, it is evident that the Department did not wish to change the condition, as it might have felt unnecessary as stated in (iii) above.

v) After the tenders were received during February, 2005, the tender was decided in favour of the firm only during September, 2005, much after the introduction of the VAT Act, 2005 which came into force from 1.4.2005. Thus, the contracting firm while signing the agreement ought to have taken into consideration that he is not likely to be burdened even after the introduction of VAT from 1.4.2005 because the extra that may be caused would be reimbursed by the Government.

vi) In as much as the clauses referred above are very clear and also as there was no change in the clauses even in the agreement concluded later, the bidder is deemed to have taken that he is liable to pay @ 2.8% only even after the introduction of VAT from 1.4.2005 and that even after its introduction, it will have no effect on him because the above clauses protect him from the burden of extra tax, since whatever excess is recovered from him will have to be compensated to him by way of reimbursement of the difference on account of the enhanced tax. Under this presumption, the bidder would have taken into account that he is liable to pay 2.8% only, though notification was issued in 1/2005 regarding introduction of VAT from 1.4.2005, because no mention was made in the bid documents to this effect or in the agreement stage by the Department.

**In the above circumstances the liability of the contractor is to be decided by the Government. In my opinion, out of the four options as stated above, the date of submission of bid is to be taken for determining the liability of the contractor irrespective of whether changes in tax structure have been carried out in the bid documents or not. In this case, work is to be treated as 'on going' work though the agreement is concluded after 1.4.2005 since the bid was submitted before 01-04-2005. The presumption of this office may be confirmed.**

vii) Consequent on the issue of G.O.Ms.No.88, Revenue(CT.II) Department, dated 27.1.2007, the original position of 2.8% was restored by the Government, but with effect from 1.9.2006 and through Government Memo No. 602/F8(1)2006, Fin(TFR) Dept., 14.3.2007, it was instructed to keep the difference of 1.2% in work by regulating the tax recovery accordingly from 1.9.2006. This applies to the works for which tenders have been received after 1-04-2005 and Agreements concluded after 1-4-2005 where VAT Act and Rules came into force where 4% is provided in respect of category (i).

viii) In the Govt. Memo No.602/F8(1)2006, Fin(TFR) Dept., 14.3.2007, 'inter alia', it was instructed that the recovery of tax be regulated from 1.9.2006 in respect of works for which agreements were concluded prior to 1.4.2005 without affording the difference of 1.2% as credit to the work. In view of the elaborate discussion aforesaid, the correct position may be to effect recovery of VAT @ 2.8% in respect of all works of category (i) for which tenders have been received prior to 1.4.2005, irrespective of the date of conclusion of the agreement.



**(B) Recovery @ 4% in the case of composite nature of works:**

As per the clause 105.1, this being a composite nature of work falling under category (i) of contract, tax @ 4% is to be deducted duly allowing an allowance of 30% thereon towards labour component as applicable for 'other contracts' as stipulated in clause (ii) of sub-rule (3) of Rule 6 as per the amendment to Rule 17 (1) of the APGST Rules, i.e., 2.8% is tax liability on gross values of work done. This position was earlier clarified in Govt.Memo.3750/F8(1)/2000-1, Fin & Plg(Proj.Wing) Department, dated 25.7.2000 also. Therefore the method of working out separately for earthwork and separately for structures at the then prescribed percentages is not correct. This may kindly be confirmed.

**(C) Whether IBM value OR the Agreement value of the report of the E.E.during execution is the criterion to determine the quantum of material component of 10% imposition of recovery of VAT:**

As per the provisions of VAT Act, and as per G.O.Ms.No.11 Fin.(W&P)/F.8) Dept., dt.29-7-2005, VAT shall not be collected if the value of material component in the work is less than 10% of the value of work. The Contractor pleads that in respect of work in question, the value of material component is in the order 5% only as per the IBM value of the Department and that hence no recovery shall be made from their bills towards VAT. The provision with reference to IBM value is immaterial for this purpose. In fact, the tax is worked out based on the turn over, i.e., the value of work done by the contractor and paid for and hence the Contract value shall be taken into account for the purpose of verifying whether the material component exceeds 10% or not to impose VAT, and not the IBM value of the Department with which the Contractor is not at all concerned. Moreover, it is reported that 15% of Contract value was considered towards CM & CD works constituting structures, etc, in the Payment Schedule in the agreement. **Therefore, the plea of the Contractor cannot be accepted.** The presumption that the value of work to be done as per Contract value shall be the criterion for determining if the material component is less than 10% of cost for the purpose of imposition of VAT may please be confirmed.

Some times during execution, there may be change in the material component which is less than 10% of the cost of work even though the material component worked out in the Agreement is more than 10%. Since the clause of APGST or VAT is already incorporated in the Agreement to that effect, recovery has to be made irrespective of percentage of material component to satisfy the APGST Act or VAT Act. Only where the element of APGST or VAT is not taken into consideration in Agreement, then only recovery is not to be made if the material component is less than 10%. The above position may please be confirmed.

In this connection the references of Commercial Taxes Department, A.P., Hyderabad vide references 7<sup>th</sup> and 8<sup>th</sup> are also herewith enclosed consequent on the issue of Government Memos vide references 5<sup>th</sup> and 6<sup>th</sup> cited.

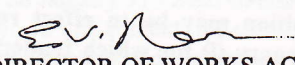
Early clarification may kindly be caused to be issued on (A), (B) and (C) for ensuring correctness and uniformity throughout the Sate in the matter.

Yours faithfully,

Sd/-

DIRECTOR OF WORKS ACCOUNTS,  
A.P., HYDERABAD.

Copy to all the Joint Director of Works Accounts/ Pay & Accounts Officers/Asst. Pay & Accounts Officers for information.

  
DIRECTOR OF WORKS ACCOUNTS,  
A.P., HYDERABAD.

1.11.05