

Sri. ASKAR, IAS
Commissioner of Commercial Taxes

D. O. Lr. No. CCT's Ref. No. PMT/P&L/2005, Dt: 12.04.2005

Dear Sir,

Sub:- AP VAT ACT, 2005- Government contracts- Certain instructions – Guidelines issued – Regarding.

* * *

I invite attention to the above subject. For the purpose of providing clarification on the issue of VAT on works contracts and to facilitate the engineering Departments to collect tax at source, it may be necessary for formal guidelines to be issued by Finance & Planning Department. IN this connection, certain draft guidelines have been prepared by CT Department for consideration. These guidelines are placed in the annexure.

As will be seen, these fresh guidelines are required to be issued to integrate VAT implementation with works contract. These include the following:

1. While making Estimates for any contract (Whether ongoing or new contracts from 1.4.2005) 4% towards tax must be incorporated separately and final estimated value of the contract must be arrived.
2. The concerned Department should collect 4% of the amount payable to the contractor towards tax and remit the same to the CT Department within 15 days from the date of such collection. After collecting the amount, the form VAT 501 supplied by the contractor must be filled in and certified and handed over to the contractor, copy of Form 501 enclosed.
3. While collecting the tax from the payments made to the contractor:-
 - a. No distinction need be made whether the contractor is a VAT dealers/TOT dealer/Unregistered dealer.
 - b. No Distinction need be made whether the contractor has opted for composition or not.
 - c. No need to collect tax where material value is less than 10% of the total value of the contract.

4. For ongoing works contracts for which the Agreement was signed prior to 1.4.2005, it may be appropriate to revise the Estimates upwards for the tax component (From the 2.8% provision under APGST to 4% under Vat) wherever necessary.

I request that Finance & Planning (W&P) be requested to issue formal guidelines in the matter immediately as deduction of TDS under VAT has been held up. IN this connection, a paper clipping from Eenadu dt: 6.4.2005 commenting adversely on this issue is endorsed.

Yours faithfully,

COMMISSIONER (CT)

To

Sri. N. S. HARIHARAN, IAS,
Special Chief Secretary to Government,
Revenue Department,
Secretariat,
Hyderabad.

Copy to Sri. I. Y. R. Krishna Rao, Principal Secretary, Finance Works & Projects, Revenue Department, Secretariat, Hyderabad for necessary action.

ANNEXURE

The salient features in AP VAT Act, 2005 with reference to works contracts in relation to the Government contracts are listed below:

1. The contractors are liable to register as VAT dealers (when their taxable turnover in 12 months exceed Rs. 40 lakhs) and as TOT dealers (When their taxable turnover is above Rs. 5 lakhs and below Rs. 40 lakhs in a period of 12 months) . Dealers having taxable turnover below Rs. 5 lakhs in a period of 12 months have no liability to register under AP VAT Act., 2005.
2. The contractors registered for Vat are given TINs(Taxpayer identification number) which is a 11 numeric digit number and the first tow digits are 28 allotted to AP the contractors registered as TOT dealers will have a alphanumeric registration number fo EG PJT/01/1/2345.
3. The VAT dealers are required to file monthly returns where as the TOT dealers are required to file quarterly returns.
4. Where any dealer executes a contract for the State Government Department or local authority where the value of the contract is more than Rs. 5 lakhs, he must register only as a Vat dealer.

Accordingly, in view of the small threshold of Rs. 5 laksh, it can be concluded that all the dealers executing works contract for the State Government Departments will have Vat registrations and have TINs.

5. If a contractor is unregistered and executing small contracts having individual values below Rs. 45 lakhs with the State Government Department, he may not have may registration number under the provisions of AP VAT Act, 2005.
6. As per the provision of AP VAT Act 2005 the contractee Government Department is obligated to collect tax at source at 4% on payments made to the contractor. There is no distinction made whether the dealer is a VAT dealer or a TOT dealer or a unregistered dealer. Hence, the Government Department is required to collect tax at 4% on all the payments made to the contractors from 1.4.2005.
7. To ensure simplicity and to avoid refunds to contractors on assessment based on actual accounts, it is desirable that Government of AP insists

on composition for all its contracts. The proof for composition in form 250 with acknowledgement by CT Department should be requested prior to making the first payment to the contractor.

8. It is proposed to provide for total exemption in respect of contracts involving less than 10% of the total value towards the cost of the material used. IN such cases, no tax collection at source needs to be made. Thus pure earth works, forest plantation schemes are exempted.
9. Regarding the liability of tax on the works contractors under the provisions of AP VAT Act, 2005 the guidelines are listed below:
The contractors are given the option of composition for the contracts executed by them with the State Government. Hence there are two categories of contracts covered under composition (Category A) and with without composition (Category B).
10. Guidelines to be followed when the contractors have opted for composition category A
 - a. The contractors must possess TINs to enable to avail composition under the provisions of AP VAT Act, 2005.
 - b. The liability of the contractor is 4% tax on total value of the contract. For example if the contract value is Rs. 100 lakhs, the tax liability is Rs. 4 lakhs under composition.
 - c. The contractee Government Department should include 4% tax component in the work Estimates where it is already a running contract or where new contracts are entered from 1.4.2005. The same will be collected proportionately every time the payments are made to the contractors from 1.4.2005 onwards.
 - d. The contractor is not entitled to claim refund of tax relating to the tax collection made at source by the contractee Government Department (since the 4% VAT is built over and above work Estimate).
 - e. When the contractee Government Department awards a contract to the contractor and such contractor gives part of the contract a sub-contractor, such sub-contractor is exempt from tax under the provisions of AP VAT Act, 2005.
 - f. An illustration indicating the tax collection to be made at source is given below.

On 20.4.2005 Executive Engineer, R&B, Nellore is required to pay and amount of Rs. 2.00 lakhs to the works contractor. The tax to be collected at source under the provisions of AP VAT Act, 2005 is 4% of Rs. 2 lakhs i.e. Rs. 8000/-, this Rs. 8000/- is to be collected and remitted to the CT Department towards tax.

- g. After collecting such tax at source the contractee Government Department should fill in the particulars of collection of tax at source and remittance to the CT Department in for Vat 501 supplied by the contractor which is obtained from his jurisdiction officer.
- h. The works contractor is permitted to avail composition for each and every contract. Once he is permitted to pay tax under composition for a particular contract, all the payments made under that particular contract shall be covered under composition provisions only.
- i. Even if a works contractor is an unregistered dealer executing a very small contract with the Government Department/local authority for a value of less than Rs. 5 lakhs tax at 4% must be collected at source and remitted to the CT Department.
- j. The contractee Government Department should remit VAT collected at source within 15 days from the date of payment to the contractee failing which the authority concerned shall be liable to pay penalty and interest for the delayed payment as per the provisions of AP VAT Act, 2005.

11. Guidelines to be followed when contractors have not opted for composition category-B:

- 1. Where a works contractor has not opted for composition, the contractee Government Department is responsible to collect tax at 4% on all the payments made to the contractor.
- 2. The works contractor under non composition scheme is liable to pay tax at appropriate rates relating to the goods which are incorporated in the execution of works contract i.e., either 4% or 12.5%. He is eligible to claim 90% of input tax credit and he can also charge tax in the invoice issued to the contractee Government Department
- 3. The contractor in this case is liable to pay the tax to CT Department as below:

- i. Output tax payable :- Tax on 4 % goods + 12.5% goods applied to the contract.
 - ii. Input tax deductible: (including other eligible items) (90% of input tax on 4% goods + 90% of input tax on 12.5% goods)
 - iii. Net tax payable in a month=output tax-input tax.
4. If no specific provision are made in the contract Agreement, the contractee Government Department is required to pay tax as shown by the contractor in his invoice and provisions relating to tax under AP VAT Act, 2005 must specifically be spelt out.
5. It is suggested that 4% towards tax be added in the Estimates and accordingly 4% tax towards VAT should be collected from the works contractor even in a non-composition case. It is further suggested that it should be made clear in the contract Agreement that tax at 4% on the total value of the contract is included/added to the Estimates and the contractee Government Department is liable only to the extent of 4% in giving taxes to the contractor which in turn will be paid to the CT Department.
6. In cases of non composition, where if the tax liability of the contractor is less than the tax amount deducted by the contractee Government Department, no tax amount shall be refunded to the works contractor by the CT Department.
7. In case the liability of the works contractor is more than 4% of the amount collected by the contractee Government Department and remitted to the CT Department, the contractor is liable to pay the excess tax from his account and no reimbursement shall be made to the works contractor. This aspect should be clearly specified in the works contract Agreement while entering with the contractors.
8. Even in the ongoing contracts, the contractee Government Department should clearly indicate the above points to the works contractors and accordingly necessary amendments to the Estimates should be made.