

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

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ORDER

Dated Dispur the 9<sup>th</sup> November/2015.

No.CTS-51/2011/320 : M/s. ECE Industries, 53, 2<sup>nd</sup> Floor, Madhabdevpur, Rehabari, Guwahati-8 has filed an application in Form-76 under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification as to the aggregate value of receipts chargeable to tax when a dealer, who has opted for "Composition Scheme for works contract" to settle his VAT liability arising out of execution of works contract happens to execute multiple works contracts of different nature during a year. The application is found to be in order and is, therefore, admitted for adjudication.

Shri Omprakesh Agarwalla, C.A. and Authorized Representative of the applicant firm appeared and made his averments. Perused the submissions of the applicant as well as relevant provisions of the applicable law including those of the extant composition scheme for works contract. The following characteristics of the composition scheme for works contracts are noteworthy.

First, the payable tax under the composition scheme becomes due for a year only at the option of a registered dealer. It is not compulsorily applicable for all registered dealers/contractors.

Second, the payable tax is required to be computed at the rate of five paise in every rupee of the aggregate proceeds, received or receivable, during a year by the opting dealer in course of execution of works contracts.

Third, the option once exercised for a year is final for that year and cannot be revoked by the dealer during that year.

Fourth, when a registered dealer exercises option for composition scheme for a year, it becomes applicable for entire proceeds received or receivable for execution of all works contracts and not only single works contract of the dealer's choice.

The applicant while making his averments appears to have put reliance on the use of articles "a" and 'the' before the term "works contract" occurring in sub-section (2) of section 20 of the Assam Value Added Tax Act, 2003 for arriving at a conclusion that the term "works contracts" employed in the relevant composition scheme means only a taxable works contract for the purpose of calculation of aggregate value computable to tax. However, the proposition sought to be advanced is wholly misconstrued in view of the following reasons. The article "a" can denote any or every depending upon the contextual circumstances. On the other hand, the article "the" is used to refer to a particular person or thing as well as group

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of people or things depending upon its contextual circumstances. Again section 2 (57) of the Assam Value Added Tax Act, 2003 defines "works contract" as : "includes any agreement for carrying out for cash, deferred payment or other payment or other valuable consideration, the building, construction, fabrication, erection, installation, filling out, improvement, modification, repair or commissioning of any movable or immovable property; Furthermore, if one looks at the various categories of composition tax envisaged by section 20 of the aforesaid act, it becomes clear that the Legislature has provided for different yardsticks to calculate the payable tax under the respective category. For a retail dealer, it is gross turnover of all goods irrespective of whether those are taxable or are exempt ; for a dealer executing works contract, it is the total contract value of the works contract ; for any class of dealers it is an amount linked with the production capacity or the extent of business, or to be calculated at a fixed rate of gross receipts of business or some such other thing, to be determined by the Government. Therefore, the theory sought to be propounded by the present petitioner for calculating payable composite tax only at the aggregate value of a particular works contract leaving aside other works contract (s) does not deserve acceptance. In fact, if such a logic is accepted, it would give rise to a situation where a registered dealers executing multiple work contracts, would seek composition scheme for particular works contracts of his choice while leaving others depending upon the component of labour and service works in the works contracts.


Therefore, in the considered view of the undersigned, a registered dealer exercising an option for discharging his liability under the extant Composition Scheme for Works Contract for any particular year shall have to pay tax on the aggregate proceeds, received or receivable for execution of all works contract during that year irrespective of their nature. The present application under section 105 of the Assam Value Added Tax Act, 2003 stands disposed accordingly.

Sd/- Anurag Goel  
Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

Memo No.CTS-51/2011/320-A  
Copy to:-

Dated Dispur, the..16 th November, 2015.

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. ECE Industries, 53, 2<sup>nd</sup> Floor, Madhabdevpur, Rehabari, Guwahati-8 for information.

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

*16/11/15*